

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/1. LEGALITY AND THE USE OF FORCE/401. Use of force by states.

WAR AND ARMED CONFLICT (

1. LEGALITY AND THE USE OF FORCE

401. Use of force by states.

Until modern times there was no prohibition on the use of force by states, and resort to war was not illegal¹. The Covenant of the League of Nations² contained restrictions upon the right of states to use force. By the International Treaty for the Renunciation of War as an Instrument of National Policy³ the state parties condemned recourse to war for the solution of international controversies, and renounced it as an instrument of national policy in their relations with each other⁴. Under the Charter of the United Nations, member states must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations⁵. There are exceptions to this general prohibition when force may be used, as where it is employed by the United Nations itself through the medium of action authorised by the Security Council⁶, by regional institutions under regional arrangements⁷, and by states acting in individual or collective self-defence⁸. In all these cases, however, the use of force is either undertaken by the United Nations or subject to its control.

A further exceptional justification has been claimed, for the use of force by states without any authorisation of the Security Council in order to avert an overwhelming humanitarian catastrophe⁹.

1 In time of peace the use of force by way eg of reprisals or self-defence was subject to limitations or conditions: see PARAS 402-405 post.

2 Ie the Treaty of Peace with Germany ('The Treaty of Versailles') (Versailles, 28 June 1919; TS 4 (1919); Cmd 153), Pt I (arts 1-26).

3 Ie 'The Pact of Paris' or 'The Kellogg-Briand Pact' (Paris, 27 August 1928; TS 29 (1929); Cmd 3410).

4 Ibid art 1. The parties agreed that settlement or solution of all disputes should never be sought except by pacific means: art 2. The pact preserved the right of states to go to war in self-defence or against another state which violated the treaty. It did not restrict the competence of the League of Nations (and now the United Nations) to take enforcement action by the use of armed force. The pact, which is still in force (although superseded in practice by the Charter of the United Nations (San Francisco, 26 June 1945; TS 67 (1946); Cmd 7015)), is part of customary international law.

5 Ibid art 2 para 4. Thus the prohibition is not only of war in its technical sense but of any use of force. Under the preamble, the member states undertake to ensure that armed force is not used save in the common interest. There is an obligation to settle international disputes peacefully: see art 2 para 3. The General Assembly reiterated the principles of the charter in its resolution concerning friendly relations and co-operation among states in accordance with the Charter: General Assembly Resolution 2625 (XXV) (24 October 1970). It adopted a definition of 'aggression' by General Assembly Resolution 3314 (XXIX) (14 December 1974). The Charter of the United Nations art 2 para 4 reflects customary international law: see *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Reports 14, (1986) Times, 28 June. See also Hargrove 'The Nicaragua Judgment and the Future of the Law of Force and Self-Defense' (1987) 81 AJIL 135. As to the threat of force see *Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion by the General Assembly of the United Nations)* [1996] ICJ Reports 226, 35 ILM 809.

6 Charter of the United Nations arts 24, 39-50, 106. Chapter VII (arts 39-51) sets out the Security Council's powers with respect to threats to the peace, breaches of the peace and acts of aggression: see further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 523-525. See also the Security Council resolution following the invasion of Kuwait by Iraq on 2 August 1990: UN Security Council Resolution 660 (2 August 1990) (which demanded 'that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990'); and UN Security Council Resolution 661 (6 August 1990), UN Security Council Resolution 665 (25 August 1990), UN Security Council Resolution 674 (29 October 1990) and UN Security Council Resolution 678 (29 November 1990) (which authorised member states of the United Nations co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implemented UN Security Council Resolution 660, to use all necessary means to uphold and implement that resolution and all subsequent relevant resolutions and to restore international peace and security in the area). See also UN Security Council Resolution 686 (2 March 1991), in which the Security Council took note of the letters of the Foreign Minister of Iraq confirming Iraq's agreement to comply fully with all of the relevant resolutions. See also Weller 'The United Nations and the jus ad bellum' in Rowe (ed) *The Gulf War 1990-91 in International and English Law* (1993) Ch 2. Compare UN Security Council Resolution 1441 (8 November 2002), in which the Security Council recalled that it had 'repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations': see PARA 13. There was no further UN Security Council resolution specifically authorising the use of armed force against Iraq in 2003. The United Kingdom took the view that its use of armed force then was lawful since it was authorised by the Security Council on the basis that UN Security Council Resolution 1441 revived the authorisation to use armed force given by UN Security Council Resolution 678. See the Attorney General's Note to the Prime Minister (7 March 2003); and his statement to Parliament (see 646 HL Official Report (6th series), 17 March 2003, written answers col 2). For further ministerial statements see 646 HL Official Report (6th Series), 17 March 2003, cols 118-122. In the absence of a resolution subsequent to, and based upon, UN Security Council Resolution 1441 some states have taken the view that the use of force against Iraq in 2003 was not authorised by the UN Security Council. The courts in England and Wales have no jurisdiction to declare the true interpretation of an international instrument which has not been incorporated into English law and where it is unnecessary to interpret it for the determination of an individual's rights and obligations under domestic law: *R (on the application of the Campaign for Nuclear Disarmament v Prime Minister)* [2002] EWHC 2777 (Admin), [2003] 3 LRC 335 (the Divisional Court refused to interpret UN Security Council Resolution 1441 in an application for an advisory declaration).

7 See the Charter of the United Nations art 53.

8 See *ibid* arts 51, 107. As to self-defence see PARAS 403-405 post.

9 See the Attorney General's Note to the Prime Minister (7 March 2003) PARA 2. This ground was argued as the basis for the use of armed force by NATO states in Kosovo in 1999: see 648 HL Official Report (6th Series), 14 May 2003, col 289. As to NATO see PARA 405 post. A similar justification was given by the United Kingdom for the establishment of the two no-fly zones in Iraq. It was stated that these 'were established in support of UN Resolution 688 and are justified under international law in response to a situation of overwhelming humanitarian necessity': 630 HL Official Report (6th Series), 14 January 2002, col 133. Not all states accept this interpretation of international law: see the *Request for the Indication of Provisional Measures Concerning the Application of the Federal Republic of Yugoslavia against the Kingdom of Belgium for Violation of the Obligation not to Use Force* (1999) 38 ILM 950, ICJ. Under modern international law, the use of force is generally no longer permissible except in individual or collective self-defence, under the authority of the Security Council, and (perhaps) for the purposes of intervention for humanitarian ends: see *Amin v Brown* [2005] EWHC 1670 (Ch).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/1. LEGALITY AND THE USE OF FORCE/402. Use of force short of war; reprisals.

402. Use of force short of war; reprisals.

Reprisals¹ are a method of retaliation for a breach of international law by means of action which would in other circumstances be itself an unjustifiable breach of international law². At customary international law, reprisals must be preceded by a demand for redress and be commensurate with the provocation and in proportion to the injury suffered by the state resorting to reprisals³. Reprisals do not justify the taking of measures against an innocent third party⁴. The right to take reprisals may be excluded by treaty⁵. Unless reprisals are used in self-defence they appear to be contrary to the Charter of the United Nations⁶.

The use of pacific blockades, that is, the blockading of the coast of a state against the shipping of that state, may now be regarded as obsolete⁷, except where it is ordered by the Security Council of the United Nations⁸.

1 'Reprisals' must be distinguished from 'retorsion', which is a method of retaliation for an unlawful act by an act or omission which is strictly lawful, although unfriendly.

2 Thus the blockade and bombardment by the British fleet of the Greek coast in 1850 in the Don Pacifico affair was unjustified since Greece had not then committed any breach of international law: 2 Oppenheim's International Law (7th Edn, 1952) pp 137-138.

3 *Responsibility of Germany for Damage caused in Portuguese Colonies* 2 UN Rep 1011 (1928). The reprisal need not, however, be an exact retaliation in kind.

4 *German Reparations Case, The Cysne* 2 UN Rep 1035 (1930) (misconduct of a belligerent would not justify the adversary in sinking a neutral ship). As to the doctrine of reprisals as a method employed by a belligerent to attempt to induce the opponent to observe the laws of war see notes 5-6 infra; and PRIZE vol 36(2) (Reissue) PARA 817. The taking of the concessions of British Petroleum Ltd by the Libyan Government in 1971 for the avowed purpose of reprisals for the alleged failure of the United Kingdom government to prevent the seizure of islands in the Persian Gulf by Iran appears to have been unlawful for this reason: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 473 et seq.

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man is within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

5 Eg the Geneva Red Cross Conventions (which are set out in the Schedules to the Geneva Conventions Act 1957) prohibit the taking of reprisals against the sick and wounded, prisoners of war and civilians during armed conflict: see PARA 421 et seq post. This has been extended to prohibit reprisals against civilian objects too: see PARA 452 post.

6 As to whether armed reprisals are permitted under international law since the International Treaty for the Renunciation of War as an Instrument of National Policy ('The Kellogg-Briand Pact') (see PARA 401 note 3 ante) and the Charter of the United Nations (see PARA 401 note 4 ante) see 2 Oppenheim's International Law (7th Edn, 1952) pp 143-144; and see Bowett 'Reprisals involving Recourse to Armed Force' 66 AJIL 1.

7 In 1903 the coast of Venezuela was blockaded by the naval forces of European states, including Great Britain, for the purpose of attempting to compel the blockaded state to honour its debts. There may, however, have been a state of war. The right of states to have recourse to armed force for the recovery of contract debts was restricted by the International Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (Hague Convention II, 'The Porter Convention') (The Hague, 18 October 1907; TS 7 (1910); Cd 5028). The measures taken by the United States against Soviet shipping bound for Cuba in 1962 were described by President Kennedy as 'quarantine', mainly, it seems, to avoid the action being characterised as 'pacific blockade'; for a discussion of this incident see Shaw's International Law (5th Edn, 2003) p 1024. As to the Hague Conventions see PARA 418 post.

8 The acting under the powers set out in the Charter of the United Nations art 41. In 1966 the Security Council determined upon sanctions against what was then Southern Rhodesia, including an embargo on oil and petroleum products. The United Kingdom government was called upon to use force if necessary to prevent the arrival at Beira of vessels reasonably believed to be carrying oil destined for Rhodesia: see UN Security Council Resolution 232 (16 December 1966); UN Security Council Resolution 235 (29 May 1968).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/1. LEGALITY AND THE USE OF FORCE/403. Self-defence in customary international law.

403. Self-defence in customary international law.

In customary international law a state has a right of self-defence against a threat to its integrity¹. Self-defence is a justification for what would otherwise be an illegal resort to force. In order to justify a particular use of force as self-defence there must be a necessity of self-

defence, instant and overwhelming, leaving no choice of means and no moment for deliberation². In so far as it is justified at all, the hot pursuit by a state's authorities of persons from its territory into the territory of another could be justified as self-defence³.

1 This includes a threat to its territory. As to whether it also includes a threat to its nationals abroad see PARA 404 post. As to the seizure of vessels on the high seas in self-defence see *The Virginius Case* (1874) 76 Parliamentary Papers (Spain No 3) 85.

2 See Mr Webster (US Secretary of State) to Her Majesty's Minister at Washington, 24 April 1841, on the case of *The Caroline* 29 BFSP 1126 (anticipatory self-defence). The general principle stated by Mr Webster was agreed to by Her Majesty's Minister on 28 July 1842: see 29 BFSP 1126 at 1137-1138; and see 30 BFSP 193 at 195-196. See also *Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion by the General Assembly of the United Nations)* [1996] ICJ Reports 226, 35 ILM 809; *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Reports 14, (1986) Times, 28 June.

3 It is not established that hot pursuit on land is sanctioned at international law. Hot pursuit on land finds no analogy in hot pursuit at sea. In the case of hot pursuit at sea, which begins in the territorial sea of the contiguous zone of the state whose authorities conduct the pursuit, the pursuit must cease on entry of the ship pursued into the territorial sea of another state: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 161. It does not, therefore, violate the territorial sovereignty of any other state, but hot pursuit on land does so, precisely. See Bowett's Self-Defence in International Law pp 38-41, where examples are given of hot pursuit (mainly of native American tribes) into the territory of neighbouring states by the authorities in the United States of America.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/1. LEGALITY AND THE USE OF FORCE/404. Self-defence and the United Nations Charter.

404. Self-defence and the United Nations Charter.

According to the Charter of the United Nations¹, nothing in it impairs the inherent right of individual or collective self-defence if an armed attack² occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security³. It is clear that the Charter of the United Nations did not subsume and supervene pre-existing customary international law in relation to self-defence⁴, but it remains controversial whether the charter merely regulates the use of self-defence in the event of an armed attack actually taking place upon a state, or whether force may be employed in self-defence, even though the state which resorts to it is merely threatened with armed force or even when there is no threat or use of armed force by another state⁵. According to the former view, self-defence is only permitted when a state is actually attacked by armed force⁶. It is also controversial, therefore, whether self-defence may be employed in case of attacks or threats upon nationals abroad⁷.

1 As to the Charter of the United Nations see PARA 401 note 4 ante.

2 See *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)* (No 2) [1986] ICJ Reports 14 at para 195, (1986) Times, 28 June.

3 See the Charter of the United Nations art 51. Measures taken by member states in the exercise of the right of self-defence must be reported immediately to the Security Council and do not in any way affect the authority and the responsibility of that organ under the charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security: art 51. See UN Security Council Resolution 502 (3 April 1982), which demanded 'an immediate withdrawal of all Argentinean forces from the Falkland Islands (Islas Malvinas)'. The United Kingdom could still maintain its right to act in self-defence according to the Charter of the United Nations art 51. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

4 See *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)* (No 2) [1986] ICJ Reports 14 at para 176, (1986) Times, 28 June.

5 See eg Bowett *Self-Defence in International Law* (1958) pp 182-199; and the Commentary of the United Kingdom government on the Charter of the United Nations (Cmd 6666) PARA 38. The United Kingdom government argued before the Security Council that taking retaliatory action to prevent the recurrence of attacks on shipping on the high seas is embraced in the principle of self-defence: British Practice in International Law 1964 (II) 268 (United States bombing of North Vietnam). The United Kingdom treated the searching by Iran of a United Kingdom registered merchant ship on the high seas during the Iran-Iraq war in 1986 as an exercise of the inherent right of self-defence to stop and search a merchant vessel on the high seas if there is reasonable grounds for suspecting the ship is taking arms to the other side for use in the conflict: see 90 HC Official Report (6th series), 28 January 1986, written answers cols 426-427. In *Oil Platforms (Islamic Republic of Iran v United States of America)* (2003) 42 ILM 1334 at para 72, the International Court of Justice concluded that it does not exclude the possibility that the mining of a single military vessel on the high seas might be sufficient to bring into play 'the inherent right of self-defence'.

In relation to the attack against Afghanistan in 2001, the United Kingdom claimed the right of self-defence (see (2001) 72 BYIL 682), and UN Security Council Resolution 1368 (12 September 2001) referred expressly to the right of self-defence even though the attacks on New York and Washington had occurred the day before. Subsequently, UN Security Council Resolution 1373 (14 November 2001) also referred to the right of individual and collective self-defence. It should be noted that this right of self-defence recognised by the UN Security Council was a right to use force against a non-state actor. The United Kingdom also claimed the right to act in self defence against Al-Qa'ida and the Taliban: see 372 HC Official Report (6th Series), 8 October 2001, col 821. The International Court of Justice has determined that Israel could not rely on the Charter of the United Nations art 51 to justify the construction of a wall in and around East Jerusalem: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) 43 ILM 1009.

6 See Brownlie *International Law and the Use of Force by States* (1963) p 251 et seq.

7 The Lord Chancellor argued, in connection with the Anglo-French action at Suez in 1956, that it could: see 199 HL Official Report (5th series), 1 November 1956, cols 1348-1359; and Bowett *Self-Defence in International Law* (1958) p 191. See also the justification by Israel for the attack at Entebbe airport on 3 July 1976 to rescue its citizens held hostage (see Akehurst (1977) 5 Int Rels 3); and by the United States for its invasion of Panama in 1989 (see (1990) 84 AJIL 494) and its launch of missiles against the Iraqi intelligence headquarters in Baghdad following the discovery of a plan to kill President Bush in Kuwait in 1993 (see Kritsiotis 'The Legality of the 1993 US Missile Strike on Iraq and the Right of Self-Defence' (1996) 45 ICLQ 162).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/1. LEGALITY AND THE USE OF FORCE/405. Collective self-defence.

405. Collective self-defence.

The Charter of the United Nations stipulates that member states have the right of collective self-defence¹. The United Kingdom² is a party to several defensive alliances with other states, such as the Brussels Treaty Organisation³, from which developed the Western European Union⁴ and the North Atlantic Treaty Organisation ('NATO')⁵.

1 Charter of the United Nations art 51. As to the Charter of the United Nations see PARA 401 note 4 ante. This should be distinguished from a regional arrangement within art 53. It has been argued that it only refers to a situation where two or more states are each defending their individual rights which are under attack, but act collectively in doing so. According to this view, collective security agreements, which aim at the maintenance of international peace and security and which usually stipulate that an attack against one party is deemed to be an attack upon all the parties, are not strictly speaking collective exercises of the right of self-defence. This view does not appear to be fully borne out by state practice: see eg the agreements referred to in the text and notes 2-5 infra. However, these have sometimes been justified as regional arrangements as envisaged by art 53. As to the argument that the action of the United States in Vietnam in the 1960s was an exercise of the right of collective self-defence see Memorandum of the Legal Adviser of the US State Department, The Legality of United States Participation in the Defense of Vietnam, 4 March 1966, 60 AJIL 565; and see also Falk *The Vietnam War and International Law* (vols I, II). There is no rule that a state may act in collective self-defence in the absence of a request from a state which regards itself as a victim of an alleged armed attack: see *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Reports 14 at para 199, (1986) Times, 28 June.

2 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

3 See the Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence (Brussels, 17 March 1948; TS 1 (1949); Cmd 7599).

4 See the Protocols to the Treaty signed at Brussels on 17 March 1948 (Paris, 23 October 1954; TS 39 (1955); Cmd 9498), supplemented by the Agreement in implementation of Article V of Protocol No 11 of the Brussels Treaty of 17 March 1948 as modified by the Protocols signed at Paris on 23 October 1954 (Paris, 14 December 1958; TS 37 (1962); Cmd 1712).

5 See the North Atlantic Treaty (Washington, 4 April 1949; TS 56 (1949); Cmd 7789); and see further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 518.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(1) DECLARATION AND TERMINATION OF WAR/406. Existence and non-existence of a state of war.

2. WAR AND NEUTRALITY

(1) DECLARATION AND TERMINATION OF WAR

406. Existence and non-existence of a state of war.

At common law no state of war exists between the United Kingdom and a foreign state until there has been a formal declaration of war by the Crown or hostilities have been commenced by the authority of the Crown on the basis that those hostilities constitute a 'war'¹. Similarly a war may be terminated only by the authority of the Crown, and this is usually effected by a treaty of peace and announced to the nation by proclamation or Order in Council². A certificate of the Secretary of State for Foreign and Commonwealth Affairs to the effect that the Crown is still at war with a foreign state is conclusive evidence that the state of war is not at an end³. During the course of a war with a foreign state, all commerce and intercourse between persons with British nationality resident in British territory and the subjects of that state, or with persons residing there, is prohibited except under licence⁴. Judicial notice will be taken of the existence of a state of war between the United Kingdom and any other country, when that is the fact, even after the termination of hostilities⁵.

Declaration of war by the Crown has not been common practice since 1945, despite the fact that the armed forces of the Crown have since that date been engaged in armed conflicts outside the United Kingdom⁶. This practice has largely resulted from the impact of international law, which recognises an 'armed conflict' as the condition precedent for the applicability of the 'laws of war' and as an alternative to a state of war⁷. Where there is no formal declaration of war, or no recognition by Her Majesty's government that a state of war exists, between the United Kingdom and a foreign state, provisions such as the Trading with the Enemy Act 1939⁸ and other legislation dependent upon a formal state of war will not be applicable⁹. In addition, litigation between a person with British nationality and a subject of such a foreign state may continue¹⁰. Specific prohibitions on trade and commerce have usually been enacted by orders made under the Import, Export and Customs Powers (Defence) Act 1939¹¹, the United Nations Act 1946¹² and the Emergency Laws (Re-enactments and Repeals) Act 1964¹³. In addition, the European Union may prohibit trade and commerce between its member states and a foreign state¹⁴. These orders will often have a similar effect as if a formal state of war existed between the United Kingdom and a foreign state and the relevant legislation had been brought into effect¹⁵.

1 As to the Crown and war and peace generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 809-819. See also PARA 408 post. A declaration of war by the Crown on the advice of United Kingdom ministers does not now bind independent members of the Commonwealth; but such a declaration binds all

colonies and other British overseas territories provided the intention to bind them is clearly expressed: see COMMONWEALTH vol 13 (2009) PARA 805 et seq. In certain circumstances, the courts may regard a state of war as being in existence despite the lack of any formal declaration of war, and even though diplomatic relations between the two states have not been formally broken off: *Kawasaki Kisen Kabushiki Kaisha of Kobe v Bantham Steamship Co Ltd (No 2)* [1938] 3 All ER 80; affd [1939] 2 KB 544, [1939] 1 All ER 819, CA. The term 'war' was construed 'in the sense in which an ordinary commercial man would use it, or . . . as the captain of a tramp steamer would interpret it': *Kawasaki Kisen Kabushiki Kaisha of Kobe v Bantham Steamship Co Ltd (No 2)* [1938] 3 All ER 80 at 83 per Goddard J. This statement should be regarded with caution due to the possibility of an armed conflict taking place involving the armed forces of the Crown in circumstances where Her Majesty's government does not recognise a state of war as being in existence. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

2 As to the Crown and treaties of peace see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 810. A state of war may also be terminated, without a treaty of peace or Order in Council, by a declaration of the Crown duly notified: see *Re Grotrian, Cox v Grotrian* [1955] Ch 501 at 506, [1955] 1 All ER 788 at 790. For an example of the implementation of a treaty of peace see the Japanese Treaty of Peace Act 1951, authorising the making of Orders in Council. For an example of an Order in Council consequent on a peace treaty see Order in Council dated 9 February 1920, SR & O 1920/264 (referred to in *Re Grotrian, Cox v Grotrian* supra at 506 and 791), which terminated the formal state of war with Germany in connection with the 1914-18 war. As to the termination of the 1939-45 war see PARA 409 post.

3 *R v Bottrill, ex p Kuechenmeister* [1947] KB 41 at 50, [1946] 2 All ER 434 at 436, CA. In a letter not drafted by a lawyer the expression 'for the duration of the war' has been construed as meaning merely 'until the end of hostilities', and a reference to 'the signing of an armistice' has been similarly construed: *Martin v Scottish Transport and General Workers Union* [1952] 1 All ER 691 at 694, HL. In the construction of gifts by will, a state of war has been held to terminate with the cessation of hostilities: see *Re Cooper's Estate, Bendall v Cooper* [1946] Ch 109, [1946] 1 All ER 28; *Re Grotrian, Cox v Grotrian* [1955] Ch 501, [1955] 1 All ER 788.

4 As to trading with the enemy generally see PARA 576 et seq post. A declaration of war does not automatically lead to the frustration of a contract, except where the declaration of war would make the performance of the contract illegal because it would involve trading with the enemy: *Finelvet AG v Vinava Shipping Co Ltd, The Chrysalis* [1983] 2 All ER 658, [1983] 1 WLR 1469; *International Sea Tankers Inc v Hemisphere Shipping Co Ltd, The Wenjiang (No 2)* [1983] 1 Lloyd's Rep 400. The continued performance of a contract will, however, be frustrated by the outbreak of war if it would have involved intercourse with or benefit to the enemy or detriment to the interests of the United Kingdom: see CONTRACT vol 9(1) (Reissue) PARA 902. This will be so even if some partial provision for the effects of war has been made by the contracting parties: *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32, [1942] 2 All ER 122, HL. See also *Atlantic Maritime Co Inc v Gibbon* [1954] 1 QB 88, [1953] 2 All ER 1086, CA.

5 As to judicial notice of a state of war see CIVIL PROCEDURE vol 11 (2009) PARA 786. As to war damage see PARAS 533-534 post. As to the disclaimer of leases by reason of war damage and requisitioning of land see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 644-647. As to the law of prize see PRIZE vol 36(2) (Reissue) PARA 801 et seq. As to the occupation of territory, and the conventions binding the United Kingdom in the conduct of its relations with other states and with alien enemies during or as a result of war, see PARAS 417, 421 et seq post.

6 In 1982, the United Kingdom government indicated formally that it was not in a state of war with Argentina. The Lord President of the Council stated, 'should Argentina formally declare war against the United Kingdom, an immediate statement would be made to the House': see (1982) 53 BYIL 519 at 520.

7 'The laws of war' refer to those treaties or conventions discussed in PARA 416 text and note 1 post, along with the relevant principles of customary international law.

8 As to the Trading with the Enemy Act 1939 see PARA 576 et seq post. The Board of Trade (now the Secretary of State for Trade and Industry) may by order direct that the provisions of that Act are to apply in relation to any area specified in the order as they apply in relation to enemy territory: see s 15(1A) (as added); and PARA 578 post. It is submitted that that provision cannot be interpreted so as to make the Trading with the Enemy Act 1939 applicable to foreign territory when there is no state of war existing between the United Kingdom and that other state. See also McNair and Watts *The Legal Effects of War* (4th Edn, 1966) p 364. As to the Board of Trade see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505; TRADE AND INDUSTRY vol 97 (2010) PARA 802.

9 'The law knows nothing of an intermediate state which is neither one thing nor the other--neither peace nor war': *Janson v Driefontein Consolidated Mines Ltd* [1902] AC 484 at 497, HL, per Lord Macnaghten; and see *The Glenearn* [1941] P 51, [1941] 1 All ER 371.

10 *Eastern Carrying Insurance Co v National Benefit Life and Property Assurance Co Ltd* (1919) 35 TLR 292; *Amin v Brown* [2005] EWHC 1670 (Ch).

11 See the Import, Export and Customs Powers (Defence) Act 1939 s 1 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARAS 996, 1027; TRADE AND INDUSTRY vol 97 (2010) PARA 808.

12 See the United Nations Act 1946 s 1(1). This gives the United Kingdom statutory authority to apply any measures not involving the use of armed force made by the Security Council of the United Nations under the Charter of the United Nations art 41 (see PARA 402 ante). As to the Charter of the United Nations see PARA 401 note 4 ante. Such a measure would include a UN Security Council resolution imposing sanctions or any other form of restriction on commercial dealings with a particular state. This may follow from a war or armed conflict or any other matter determined by the Security Council to be a threat to the peace, a breach of the peace or an act of aggression: see the Charter of the United Nations arts 39, 41. See eg Serbia and Montenegro (United Nations Sanctions) Order 1992, SI 1992/1302; United Nations Arms Embargoes (Liberia, Somalia and the Former Yugoslavia) Order 1993, SI 1993/1787 (amended by SI 1997/273); Libya (United Nations Sanctions) Order 1993, SI 1993/2807; Haiti (United Nations Sanctions) Order 1994, SI 1994/1323; Former Yugoslavia (United Nations Sanctions) Order 1994, SI 1994/2673; Export of Goods (United Nations Sanctions) (Sierra Leone) Order 1997, SI 1997/2464 (amended by SI 1997/3033); Federal Republic of Yugoslavia (United Nations Sanctions) Order 1998, SI 1998/1065 (amended by SI 1999/280); Iraq (United Nations Sanctions) Order 2000, SI 2000/3241 (amended by SI 2003/1347; SI 2003/1519; SI 2004/1498; SI 2004/1660); Al-Qa'ida and Taliban (United Nations Measures) Order 2002, SI 2002/111 (amended by SI 2002/251); Somalia (United Nations Sanctions) Order 2002, SI 2002/2628; Iraq (United Nations Sanctions) Order 2003, SI 2003/1519; Liberia (United Nations Sanctions) Order 2004, SI 2004/348; Ivory Coast (United Nations Sanctions) Order 2005, SI 2005/253; Democratic Republic of the Congo (United Nations Measures) Order 2005, SI 2005/1517; Sudan (United Nations Measures) Order 2005, SI 2005/1259.

13 See the Emergency Laws (Re-enactments and Repeals) Act 1964 s 2 (repealed); and PARA 507 post. See *Shanshal v Al-Kishtaini* [2001] EWCA Civ 264, [2001] 2 All ER (Comm) 601.

14 See eg EC Commission Regulation 2340/90 (OJ L213, 9.8.90, p 1) preventing trade by the Community as regards Iraq and Kuwait (amended by EEC Council Regulation 3155/90 (OJ L304, 1.11.90, p 1); EEC Council Regulation 542/91 (OJ L60, 7.3.91, p 5); EEC Council Regulation 811/91 (OJ 82, 28.3.91, p 50); EEC Council Regulation 1194/91 (OJ L115, 8.5.91, p 37)); EC Council Regulation 3541/92 (OJ L361, 10.12.92, p 1) prohibiting the satisfying of Iraqi claims with regard to contracts and transactions the performance of which was affected by United Nations Security Council Resolution 661 (1990) and related resolutions; EC Council Regulation 1763/2004 (OJ L315, 14.10.2004, p 14) imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the Former Yugoslavia (amended by EC Commission Regulation 1965/2004 (OJ L339, 16.11.2004, p 4); EC Commission Regulation 2233/2004 (OJ L379, 24.12.2004, p 75); EC Commission Regulation 295/2005 (OJ L50, 23.2.2005, p 5); EC Commission Regulation 607/2005 (OJ L100, 20.4.2005, p 17); EC Commission Regulation 830/2005 (OJ L137, 31.5.2005, p 24); EC Commission Regulation 1208/2005 (OJ L197, 28.7.2005, p 19)). See also the International Criminal Tribunal for the Former Yugoslavia (Financial Sanctions against Indictes) Regulations 2005, SI 2005/1527. In *Shanning International Ltd v Lloyds TSB Bank plc, Lloyds TSB Bank plc v Rasheed Bank* [2001] UKHL 31 at [18], [2001] 1 WLR 1462 at [18] per Lord Bingham of Cornhill, it was held that the embargo on trade and financial dealings with Iraq (made by UN Security Council Resolution 687) had the inevitable and intended effect of halting the performance of current contracts; and, on this basis, EC Council Regulation 3541/92 (OJ L361, 10.12.92, p 1) permanently precluded claims arising in connection with payment under guarantee to a person or body in Iraq.

15 See eg the Import, Export and Customs Powers (Defence) Act 1939 s 1 (as amended) (see the text and note 11 supra); and the Export of Goods (Control) (Iraq and Kuwait Sanctions) Order 1990, SI 1990/1640 (revoked).

UPDATE

406 Existence and non-existence of a state of war

NOTE 12--SI 1992/1302, SI 1994/1323, SI 1998/1065, SI 2000/3241, SI 2002/2628, SI 2003/1519, SI 2004/348, SI 2005/253, SI 2005/1517 amended: SI 2005/3389. SI 1993/1787 amended: SI 2005/3389, SI 2008/3128. SI 1997/2464 lapsed on partial repeal of enabling authority by the Export Control Act 2002 s 15. SI 2002/111 amended: Counter-Terrorism Act 2008 Sch 9 Pt 4, SI 2005/3389, SI 2006/2952. SI 2005/1259 replaced: Sudan (United Nations Measures) Order 2006, SI 2006/1454.

For the procedure for applications to set aside decisions under SI 2002/111 see CPR Pt 79 (added SI 2008/3085); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 549.

NOTE 14--Regulation 1763/2004 further amended: EC Commission Regulations 830/2005 (OJ L37, 31.5.2005, p 24), 1208/2005 (OJ L197, 28.7.2005, p 19), 1636/2005 (OJ L261, 7.10.2005, p 20), 23/2006 (OJ L5, 10.1.2006, p 8), 416/2006 (OJ L72, 11.3.2006, p 7), 1053/2006 (OJ L189, 12.7.2006, p 5), 1791/2006 (OJ L363, 20.12.2006, p 1), 789/2007 (OJ L175, 5.7.2007, p 27), 738/2008 (OJ L201, 30.7.2008, p 33).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(1) DECLARATION AND TERMINATION OF WAR/407. Levying of war by those owing allegiance to the Crown.

407. Levying of war by those owing allegiance to the Crown.

Any person owing allegiance to the Crown¹ will be guilty of treason if he levies war against the monarch within the realm or if he adheres to the monarch's enemies by giving them aid or comfort within the realm or elsewhere². He may also be guilty of inciting, aiding or abetting an act of treason³ or of misprision of treason⁴. Other offences of a similar nature may be committed under legislation relating to terrorism⁵.

1 As to allegiance see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 29-33; and see also BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 9. An alien resident within British territory owes allegiance to the Crown even though he does not have British nationality, and the protection of the Crown does not cease merely because British forces, for strategic or other reasons, have been temporarily withdrawn so that the enemy for a time exercises the rights of an army in occupation: *De Jager v A-G of Natal* [1907] AC 326 at 328, PC. An alien resident in British territory who goes abroad with a British passport also owes a duty of allegiance: see *Joyce v DPP* [1946] AC 347, [1946] 1 All ER 186, HL (passport obtained by misrepresentation).

2 As to treason generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 363-369.

3 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49.

4 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 365.

5 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 383 et seq.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(1) DECLARATION AND TERMINATION OF WAR/408. Declaration of war.

408. Declaration of war.

In order to constitute a legal state of war between the United Kingdom and a foreign state there must be either a formal declaration of war by the Crown¹ or hostilities must have been commenced by the authority of the Crown². Thus hostilities against a foreign state, even though the whole nation joins in, without the concurrence of the executive do not constitute a legal state of war or a legal breach of the peaceful relations existing between the two countries³. Such acts of hostility without the authority of the Crown are in certain cases punishable with fine and imprisonment⁴.

1 See also PARA 406 ante. Declarations of war are usually transmitted through the ambassador of the foreign government and announced to the nation by means of a proclamation. To ascertain the date of war, the declaration transmitted through the British ambassador at the foreign court to the Foreign Office may be used in evidence (*Thelluson v Cosling* (1803) 4 Esp 266), or, it seems, the proclamation announcing the war might be

used under the Evidence Act 1845 s 3 (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARAS 889-890). The necessity for a declaration of war is laid down in the International Convention relative to the Opening of Hostilities (Hague Convention III) (The Hague, 18 October 1907; TS 8 (1910); Cd 5029), whereby hostilities must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or an ultimatum with a conditional declaration of war: art 1. There is also a duty to notify the existence of a state of war to neutral countries without delay: art 2. As to the Hague Conventions see PARA 418 post. The relevance of a declaration of war irrespective of the outlawry of aggressive war by the International Treaty for the Renunciation of War as an Instrument of National Policy ('The Kellogg-Briand Pact') (see PARA 401 note 3 ante) was affirmed by the International Military Tribunal at Nuremberg in its judgment of 30 September 1946 (Cmd 6964) 36-37. See also the Charter of the United Nations art 2 para 4; and 2 Oppenheim's International Law (7th Edn, 1952) p 290. As to the Charter of the United Nations see PARA 401 note 4 ante. See generally Greenwood 'The Concept of War in Modern International Law' (1987) 36 ICLQ 283.

2 A de facto state of war may have existed between two countries even though there had been no formal declaration, provided hostilities had actually commenced: *The Teutonia* (1872) LR 4 PC 171. For the purposes of offences under the Foreign Enlistment Act 1870 s 8 (as amended) (see PARA 413 post), a declaration of war by one of two foreign belligerents, or a declaration of neutrality by this country, is not necessary, provided hostilities have actually commenced: *United States of America v Pelly* [1899] WN 11. However, a seizure of goods belonging to an alien enemy by the government of a foreign state intending to embark upon war with the United Kingdom, but before the commencement of actual hostilities or a formal declaration of war, does not relieve an insurer of the goods in the United Kingdom of his liability under the contract of insurance: *Janson v Driefontein Consolidated Mines Ltd* [1902] AC 484, 4 BILC 682, HL; and see also *Nigel Gold Mining Co Ltd v Hoade* [1901] 2 KB 849; *Amin v Brown* [2005] EWHC 1670 (Ch). Where the policy contained a warranty against 'capture, seizure and detention, and the consequences thereof', it was held otherwise: *Robinson Gold Mining Co v Alliance Insurance Co* [1904] AC 359, HL. As to the effect of such a warranty where a neutral ship was captured as prize and subsequently lost by wreck see *Andersen v Marten* [1908] AC 334, HL. For the meaning of 'United Kingdom' see PARA 402 note 4 ante. As to prize generally see PRIZE.

3 4 Co Inst 152; 1 BI Com (14th Edn) 252, 257. War is a contention between two or more states, through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases: 2 Oppenheim's International Law (7th Edn, 1952) p 202.

4 Various offences relating to the fitting out of ships, expeditions etc to be used in the service of any state at war with any friendly state are made punishable under the Foreign Enlistment Act 1870: see PARA 412 et seq post. By the rules of international law, as generally received, no breach of neutrality is committed by the government of a state in permitting its subjects to fit out and sell ships of war, arms etc in good faith to a friendly state at war with another friendly state, such ships, arms etc being merely articles of commerce, and neutrals being permitted to carry on their commerce with belligerents subject to the risk of capture and confiscation, if contraband. Contracts, therefore, between subjects of a neutral state to export contraband goods to a belligerent (*Re Grazebrook, ex p Chavasse* (1865) 4 De GJ & Sm 655, LC), or relating to trade with a blockaded port (*The Helen* (1865) LR 1 A & E 1), are not illegal, and may be enforced in the country in which they are made. Private persons taken in actual acts of hostility against a friendly state may, it seems, be treated as mere pirates or robbers by the latter (1 BI Com (14th Edn) 257), though they are sometimes handed over to their own government for punishment. For an example of such a case see *R v Jameson* [1896] 2 QB 425, 3 BILC 611, DC, where, however, the government in question was under British suzerainty.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(1) DECLARATION AND TERMINATION OF WAR/409. Termination of the 1939-45 war.

409. Termination of the 1939-45 war.

The 1939-45 war was never terminated by a peace treaty as regards Germany although the state of war was formally terminated at 4pm on 9 July 1951¹. The state of war with Italy, Romania, Bulgaria, Hungary and Finland was ended on 15 September 1947², with Austria on 16 September 1947³, and with Japan on 8 September 1951⁴, and powers to make Orders in Council for carrying out the peace treaties were conferred by statute⁵.

1 See the declaration published in the supplement to the London Gazette dated 9 July 1951 at p 3739, and corrected in the London Gazette dated 2 October 1951 at p 5117. See also the declaration dated 5 June 1945 on the Unconditional Surrender of Germany (Cmd 6648). As to the termination of war generally see PARA 406 ante.

2 See the declaration in the London Gazette dated 16 September 1947 at p 4339.

3 See the declaration in the London Gazette dated 16 September 1947 at p 4340.

4 See the Treaty of Peace with Japan (San Francisco, 8 September 1951; TS 33 (1952); Cmd 8601).

5 See by the Treaties of Peace (Italy, Romania, Bulgaria, Hungary and Finland) Act 1947 (see the Treaty of Peace with Italy (Paris, 10 February 1947; TS 50 (1948); Cmd 7481); and the Treaties of Peace with Bulgaria, with Finland, with Hungary and with Romania (Paris, 10 February 1947; TS 52-55 (1948); Cmds 7483-7486)); the Japanese Treaty of Peace Act 1951 (see the Treaty of Peace with Japan); and the Austrian State Treaty Act 1955 (see the State Treaty for the Re-establishment of an Independent and Democratic Austria (Vienna, 15 May 1955; TS 58 (1957); Cmd 214)). As to Parliamentary sanction for treaties see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 802.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(2) PREROGATIVE POWERS IN WARTIME/410. Blockade and angary.

(2) PREROGATIVE POWERS IN WARTIME

410. Blockade and angary.

In time of war the Crown may promulgate blockades of ports or any portion of the coast belonging to an enemy¹. The Crown has also, by right of its prerogative, a *jus angariae*, that is to say a right to appropriate the property of a neutral where necessity requires in time of war. This right of angary can only be exercised subject to the right of the neutral owner to receive compensation, which may be enforced by legal process².

1 As to the requirements of international law regarding the establishment of a blockade see the Declaration of Paris respecting Maritime Law (Paris, 16 April 1856; 46 BFSP 26); 2 Oppenheim's International Law (7th Edn, 1952) pp 767-797; and PRIZE vol 36(2) (Reissue) PARA 814 et seq.

2 *Commercial and Estates Co of Egypt v Ball* (1920) 36 TLR 526; *Commercial and Estates Co of Egypt v Board of Trade* [1925] 1 KB 271, CA. The rules relating to the right of angary are well-established rules of customary international law which have been received as part of English municipal law, and will be applied as such by English municipal courts. By international law a belligerent power has the right to requisition vessels or goods in the custody of its prize court pending a decision of the question whether they should be condemned or released, but such right is subject to certain limitations: *The Zamora* [1916] 2 AC 77 at 106, PC. For the limitations on the right of angary see PRIZE vol 36(2) (Reissue) PARA 812 et seq. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 814.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(2) PREROGATIVE POWERS IN WARTIME/411. Requisition of British ships.

411. Requisition of British ships.

In time of war or national emergency the Crown has a prerogative right to requisition British ships in territorial waters¹. The requisition of ships and of anything on board ship² and the requisition of shipping space were effected during the 1939-45 war under defence regulations³ and compensation was payable in accordance with statute⁴, there being established a shipping claims tribunal for determining disputes as to the payment of compensation⁵.

1 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 813; and see the Prerogative Order in Council Requisition of Ships Order 1982 (4 April 1982) (relating to the Falkland Islands conflict).

2 A mere order to discharge a cargo is not necessarily a requisition of the cargo: see *Nicolaou v Minister of War Transport* [1944] 2 All ER 322.

3 See the Defence (General) Regulations 1939, SR & O 1939/927, regs 53, 54 (revoked).

4 See the Compensation (Defence) Act 1939 ss 1(1)(b), 4, 5, 6 (s 4 as amended); and PARA 508 et seq post.

5 See *ibid* s 8(1), (2); and PARA 514 post. As to insurance of ships against war risks see INSURANCE vol 25 (2003 Reissue) PARA 336 et seq.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(3) NEUTRALITY AND ILLEGAL ACTIVITIES/412. Foreign enlistment.

(3) NEUTRALITY AND ILLEGAL ACTIVITIES

412. Foreign enlistment.

It is a statutory offence¹:

- 1 (1) for any person having British nationality², within or without Her Majesty's dominions, to accept, or agree to accept, without Her Majesty's licence³, any commission or engagement in the military or naval service⁴ of any foreign state⁵ at war⁶ with any friendly state (that is, a foreign state which is at peace with Her Majesty)⁷;
- 2 (2) for anyone, whether having British nationality or not, within Her Majesty's dominions to induce any other person to accept, or agree to accept, any such commission or engagement⁸;
- 3 (3) for any person having British nationality, without Her Majesty's licence, to quit, or go on board any ship⁹ with a view of quitting, Her Majesty's dominions with intent to accept any such commission or engagement¹⁰;
- 4 (4) for anyone, whether having British nationality or not, within Her Majesty's dominions to induce any other person to quit, or to go on board any ship with a view of quitting, Her Majesty's dominions with the like intent¹¹;
- 5 (5) for anyone to induce any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which that person is to be engaged with the intent or in order that that person may accept, or agree to accept, any such commission¹²;
- 6 (6) for the master¹³ or owner of any ship, without Her Majesty's licence, knowingly to take, or engage to take, or to have on board the ship within Her Majesty's dominions any illegally enlisted person¹⁴.

A person guilty of any such offence is liable to a penalty¹⁵. In the case of an offence under head (6) above, the ship must be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on him have been paid, or until he has given security for the payment of those penalties to the satisfaction of two justices of the peace¹⁶.

1 *Ie* under the Foreign Enlistment Act 1870 ss 4-7 (ss 4-6 as amended): see heads (1)-(6) in the text. It has been said that it was a misdemeanour at common law to enter the service of any foreign state without the leave of the Sovereign: 1 East PC 81. Mercenary service abroad was very common before the passing of the

Foreign Enlistment Act 1870. It is said to be unlawful for a person having British nationality to receive a pension from a foreign king or state without the Sovereign's licence: 3 Co Inst 144.

2 The Foreign Enlistment Act 1870 refers to a 'British subject', but this term is now used for a very limited class of persons (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 9, 66 et seq), and the reference should be read more widely. As to British citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

3 A licence is required to be under the sign manual or to be signified by Order in Council or by proclamation: Foreign Enlistment Act 1870 s 15.

4 For these purposes, 'military service' includes military telecommunications and any other employment whatever in or in connection with any military operation: see *ibid* s 30 (definition amended by the Telecommunications Act 1984 s 109(1), Sch 4 para 5). 'Naval service', as respects a person, includes service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when that ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store ship, privateer or ship under letters of marque; and as respects a ship, includes any user of a ship as a transport, store ship, privateer or ship under letters of marque: see the Foreign Enlistment Act 1870 s 30. For the meaning of 'ship' see note 9 *infra*. It is uncertain whether military or naval service for these purposes includes service in an air force; but see generally *Dyke v Elliott, The Gauntlett* (1872) LR 4 PC 184 at 192 (the definitions in the Foreign Enlistment Act 1870 are not restrictive but inclusive).

5 'Foreign state' includes any foreign prince, colony, province or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province or part of any province or people: see the Foreign Enlistment Act 1870 s 30. See also *R v Carlin, The Salvador* (1870) LR 3 PC 218 (a decision under the Foreign Enlistment Act 1819 (repealed)). For a discussion of the difficulties of interpretation and the application of the Foreign Enlistment Act 1870 in the case of mercenaries see the *Report of the Committee of Privy Counsellors appointed to inquire into the Recruitment of Mercenaries* (1976) (Cmnd 6569).

6 It is uncertain whether 'war' for these purposes includes international police action.

7 Foreign Enlistment Act 1870 s 4. For decisions with reference to illegal enlistment etc under the Foreign Enlistment Act 1819 see *R v Rumble* (1864) 4 F & F 175; *R v Jones and Highat* (1864) 4 F & F 25; *R v Corbett* (1865) 4 F & F 555; *Burton v Pinkerton* (1867) LR 2 Exch 340.

8 Foreign Enlistment Act 1870 s 4. See also note 7 *supra*. The penalty for such inducement is the same as the penalty for the principal offence: see the text and note 15 *infra*.

9 'Ship' includes any description of boat, vessel, floating battery or floating craft and also any description of boat, vessel or other craft or battery made to move either on the surface of or under water, or sometimes on the surface of and sometimes under water: *ibid* s 30.

10 *Ibid* s 5.

11 *Ibid* s 5. The penalty for such inducement is the same as the penalty for the principal offence: see the text and note 15 *infra*.

12 *Ibid* s 6.

13 'Master' includes any person having charge or command of a ship: *ibid* s 30.

14 *Ibid* s 7. On the discovery of such an offence, all illegally enlisted persons are to be taken on shore immediately and not allowed to return to the ship: s 7. 'Illegally enlisted person' means: (1) any person who, being a person having British nationality within or without Her Majesty's dominions, has without Her Majesty's licence accepted or agreed to accept such a commission or engagement as is mentioned in head (1) in the text; (2) any person, being a person having British nationality, who without such a licence is about to quit Her Majesty's dominions with intent to accept any such commission or engagement; or (3) any person who has been induced to embark under a misrepresentation or false representation of the service in which he is to be engaged with the intent that he may accept or agree to accept any such commission or engagement: s 7.

15 *Ibid* ss 4-7, 13 (ss 4-6 amended by virtue of the Criminal Justice Act 1948 s 1(2)). The penalty is a fine or imprisonment for not more than two years, or both a fine and such imprisonment, at the discretion of the court: see the Foreign Enlistment Act 1870 ss 4-7, 13 (ss 4-6 as so amended). Any person who aids, abets, counsels or procures the commission of any such offence is liable to be tried and punished as a principal offender: s 12. As to participation in crime generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 49 et seq.

16 Ibid s 7.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(3) NEUTRALITY AND ILLEGAL ACTIVITIES/413. Illegal shipbuilding etc.

413. Illegal shipbuilding etc.

It is a statutory offence¹ for any person within Her Majesty's dominions and without Her Majesty's licence²:

- 7 (1) to build³ or agree to build or cause to be built any ship with intent or knowledge or having reasonable cause to believe that it is to be, or will be, employed in the military or naval service⁴ of any foreign state⁵ at war⁶ with any friendly state⁷; or
- 8 (2) to issue any commission for, or equip⁸ or dispatch or cause or allow to be dispatched, any ship with the like intent or knowledge⁹; or
- 9 (3) by adding to the number of guns, or by changing those on board for other guns, or by the addition of any equipment for war, to increase or augment, or procure to be increased or augmented, the warlike force of any ship which, at the time of its being within Her Majesty's dominions, was in the military or naval service of any foreign state at war with a friendly state¹⁰.

A person guilty of any of these offences is liable to a penalty¹¹. In the case of any offence under head (1) or head (2) above, the ship in respect of which the offence is committed is forfeited, with her equipment¹², to the Crown¹³. A person building, causing to be built or equipping a ship in pursuance of a contract made before the commencement of the war is not, however, liable to any such penalties if, forthwith upon Her Majesty's proclamation of neutrality, that person:

- 10 (a) gives notice to the Secretary of State¹⁴ that he is so building, causing to be built or equipping the ship, and furnishes such particulars of the contract and of any matters relating to, or done or to be done under, the contract as may be required by the Secretary of State; and
- 11 (b) gives such security and takes and permits to be taken such other measures as the Secretary of State may prescribe for ensuring that the ship is not dispatched, delivered or removed without Her Majesty's licence until the termination of the war¹⁵.

1 lie under the Foreign Enlistment Act 1870 ss 8, 10 (as amended): see heads (1)-(3) in the text. See also *R v Sandoval* (1887) 3 TLR 411; *R v Granatelli* (1849) 7 State Tr NS 979; *A-G v Sillem* (1864) 2 H & C 431; *R v Rumble* (1864) 4 F & F 175; *Re Grazebrook, ex p Chavasse* (1865) 4 De GJ & Sm 655 (decisions under the Foreign Enlistment Act 1819 (repealed)).

2 As to the form of the licence see PARA 412 note 3 ante.

3 'Building', in relation to a ship, includes doing any act towards or incidental to the construction of a ship; and all words having relation to building are to be construed accordingly: Foreign Enlistment Act 1870 s 30. For the meaning of 'ship' see PARA 412 note 9 ante.

4 For the meanings of 'military service' and 'naval service' see PARA 412 note 4 ante.

5 For the meaning of 'foreign state' see PARA 412 note 5 ante.

6 As to evidence of the outbreak of war see *United States of America v Pelly* (1899) 47 WR 332.

7 Foreign Enlistment Act 1870 s 8. Where any ship is built by order of, or on behalf of, any foreign state when at war with a friendly state, or is delivered to, or to the order of, such foreign state, or any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, that ship is, until the contrary is proved, deemed to have been built with a view to being so employed, and the burden lies on the builder of the ship of proving that he did not know that it was intended to be so employed in the military or naval service of the foreign state: s 9. For the meaning of 'friendly state' see PARA 412 ante.

8 'Equipping', in relation to a ship, includes furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service; and all words relating to equipment are to be construed accordingly: *ibid* s 30.

9 *Ibid* s 8. To let a tug to one of the combatants for the purpose of towing a prize with a prize crew on board to home waters of the captor is the dispatching of a ship for the purpose of taking part in the naval service of that combatant: *Dyke v Elliott, The Gauntlet* (1872) LR 4 PC 184. As to prize generally see PRIZE.

10 Foreign Enlistment Act 1870 s 10.

11 *Ibid* ss 8, 10, 13 (ss 8, 10 amended by virtue of the Criminal Justice Act 1948 s 1(2)). The penalty is a fine or imprisonment for not more than two years, or both a fine and such imprisonment, at the discretion of the court: see the Foreign Enlistment Act 1870 ss 8, 10, 13 (ss 8, 10 as so amended). Accessories may be punished as principals: see s 12; and PARA 412 note 15 ante.

12 'Ship and equipment' includes a ship and everything in or belonging to a ship: *ibid* s 30. Provision is made for the restoration to their owners of prizes captured by ships illegally built etc: see s 14; and PRIZE vol 36(2) (Reissue) PARA 808.

13 *Ibid* s 8.

14 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

15 See the Foreign Enlistment Act 1870 s 8.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(3) NEUTRALITY AND ILLEGAL ACTIVITIES/414. Illegal expeditions.

414. Illegal expeditions.

If any person within Her Majesty's dominions and without Her Majesty's licence¹ prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state², any person engaged in the preparation or fitting out or assisting in it, or employed in any capacity in that expedition, is guilty of an offence³. If the illegal expedition is to any extent prepared within Her Majesty's dominions, the participation in it outside those dominions by a person having British nationality is also an offence⁴.

A person guilty of such an offence is liable to a penalty⁵. All ships and their equipment⁶ and all arms and munitions of war used in or forming part of the expedition are to be forfeited to Her Majesty⁷.

1 As to the form of licence see PARA 412 note 3 ante.

2 For the meaning of 'friendly state' see PARA 412 ante.

3 Foreign Enlistment Act 1870 s 11. It is not necessary in order to constitute an offence under s 11 that the expedition should be completely fitted out; any act of preparation is sufficient: *R v Sandoval* (1887) 56 LT 526; and see *R v Jameson* [1896] 2 QB 425, DC.

4 *R v Jameson* [1896] 2 QB 425, DC. The Secretary of State and certain public officers have powers of search, seizure and detention of suspected vessels: see PARA 415 post. As to the Secretary of State see PARA 413 note 14 ante.

5 Foreign Enlistment Act 1870 ss 11, 13 (s 11 amended by virtue of the Criminal Justice Act 1948 s 1(2)). The penalty is a fine or imprisonment for a term not exceeding two years, or both a fine and such imprisonment, at the discretion of the court: see the Foreign Enlistment Act 1870 ss 11, 13 (s 11 as so amended). Any overt act of preparation for such an expedition, eg the purchase of guns which are sent to a foreign port to be shipped there on the vessel in which the expedition is to be made, is an offence against the Foreign Enlistment Act 1870: *R v Sandoval* (1887) 56 LT 526. Accessories are punished as principal offenders: see the Foreign Enlistment Act 1870 s 12; and PARA 412 note 15 ante.

6 For the meaning of 'ship' see PARA 412 note 9 ante; and for the meaning of 'ship and equipment' see PARA 413 note 12 ante.

7 Foreign Enlistment Act 1870 s 11.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/2. WAR AND NEUTRALITY/(3) NEUTRALITY AND ILLEGAL ACTIVITIES/415. Powers to seize and detain ships.

415. Powers to seize and detain ships.

The following officers may seize or detain any ship¹ liable to be seized or detained in pursuance of the provisions relating to foreign enlistment², illegal shipbuilding³ and illegal expeditions⁴:

- 12 (1) any officer of Her Majesty's Revenue and Customs in the United Kingdom⁵, subject to any special or general instructions from the Commissioners for Her Majesty's Revenue and Customs⁶, or any officer of the Board of Trade⁷, subject to any special or general instructions from that board;
- 13 (2) any officer of customs or public officer in any British possession⁸, subject to any special or general instructions from the governor⁹ of that possession;
- 14 (3) any commissioned officer on full pay in the military service¹⁰ of the Crown, subject to any special or general instructions from his commanding officer; and
- 15 (4) any commissioned officer on full pay in the naval service¹¹ of the Crown, subject to any special or general instructions from the Defence Council or his superior officer¹².

Any officer authorised to seize or detain any ship in respect of any offence under those provisions may, for the purpose of enforcing that seizure or detention, call to his aid specified persons¹³ and may put on board one or more of such persons to take charge of the ship and to enforce the statutory prohibitions¹⁴. Any officer so seizing or detaining any ship may use force for the purpose, if necessary, and if any person is killed or maimed by reason of his resisting that officer in the execution of his duties, or any person acting under his orders, that officer or other person is freely and fully indemnified both against Her Majesty and against all persons so killed, maimed or hurt¹⁵.

If the Secretary of State or the chief executive authority¹⁶ is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped¹⁷ contrary to the statutory provisions, and is about to be taken beyond the limits of those dominions, or that a ship is about to be dispatched contrary to those provisions, he has power to issue a warrant stating that there is reasonable and probable cause for such belief, and the officers mentioned above have power upon that warrant to seize and search that ship, and to detain it until it has been either condemned or released by process of law¹⁸. The owner of the ship or his agent may apply to the court¹⁹ for its release, and the

court must as soon as possible put the matter of the seizure and detention in course of trial between the applicant and the Crown²⁰. If the applicant establishes to the court's satisfaction that the ship was not and is not being so built, commissioned or equipped, or intended to be dispatched, the ship must be released and restored, but must otherwise be detained until released by order of the Secretary of State or chief executive authority²¹. In cases where no proceedings are pending for its condemnation, the court may release any ship so detained on the owner giving security to its satisfaction that the ship will not be employed contrary to the statutory provisions, notwithstanding that the applicant may have failed to establish to the court's satisfaction that the ship was not and is not being so built, commissioned or equipped, or intended to be dispatched, and the Secretary of State or the chief executive authority may likewise release any ship so detained, either with or without the owner giving security²². If the court is of the opinion that there was not reasonable and probable cause for the detention, and if no such cause appears in the course of the proceedings, the court has power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount of which is to be assessed by the court, and any amount so assessed is payable by the Treasury out of any money legally applicable for that purpose²³. Nothing in these provisions affects any proceedings instituted or to be instituted for the condemnation of any ship detained under them where the ship is liable to forfeiture, except that if that ship is restored all proceedings for its condemnation are to be stayed²⁴; and nothing in them applies to any foreign non-commissioned ship dispatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character has taken place in this country²⁵.

Where it is represented to any such officer as is mentioned in heads (1) to (4) above, and that officer believes, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned or equipped contrary to the statutory provisions, and is about to be taken beyond the limits of those dominions, or that a ship is about to be dispatched contrary to those provisions, it is his duty to detain the ship and forthwith to communicate the fact of that detention to the Secretary of State or chief executive authority²⁶. Upon the receipt of that communication, the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that it was so built, commissioned or equipped or intended to be dispatched, he must issue his warrant stating that there is reasonable and probable cause for the belief communicated to him, and upon that warrant being issued further proceedings are to be taken in the same way as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any such communication²⁷.

The Secretary of State or the chief executive authority may, by warrant, empower any person to enter any dockyard or other place within Her Majesty's dominions and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign state at war with a friendly state, and to search that ship²⁸.

Neither the Secretary of State nor the chief executive authority is responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of these provisions, and he is not examinable as a witness except at his own request in any court of justice in respect of the circumstances which led to the issue of the warrant²⁹.

1 For the meaning of 'ship' see PARA 412 note 9 ante.

2 I.e. the Foreign Enlistment Act 1870 ss 4-7 (ss 4-6 as amended): see PARA 412 ante.

3 I.e. *ibid* ss 8-10 (as amended): see PARA 413 ante.

4 I.e. *ibid* s 11 (as amended): see PARA 414 ante.

5 For the purposes of the Foreign Enlistment Act 1870 generally, 'United Kingdom' includes the Isle of Man, the Channel Islands and other adjacent islands: s 30. For these purposes, however, special provision is made in relation to the Isle of Man: see s 21 (amended by the Isle of Man (Transfer of Functions) Order 1980, SI 1980/399, art 2, Schedule para 1). For the meaning of 'United Kingdom' generally see PARA 402 note 4 ante.

6 The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; INCOME TAXATION. See also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 13. All statutory and other references to the Commissioners of Customs and Excise and their officers are, in so far as it is appropriate, now to be taken as references to the Commissioners for Her Majesty's Revenue and Customs and their officers: s 50(1), (2).

7 The functions of the Board of Trade are now carried out by the Secretary of State for Trade and Industry: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505; TRADE AND INDUSTRY vol 97 (2010) PARA 802.

8 'British possession' means any territory, colony, or place being part of Her Majesty's dominions, and not part of the United Kingdom as defined in note 5 supra: see the Foreign Enlistment Act 1870 s 30. See further COMMONWEALTH vol 13 (2009) PARA 801 et seq.

9 'Governor', as respects a British possession which consists of several constituent colonies, means the Governor General of the whole possession or the governor of any of the constituent colonies, and, as respects any other British possession, means the officer for the time being administering the government of that possession; and any person acting for or in the capacity of a governor is included under the term: *ibid* s 30 (definition amended by the Government of India (Adaptation of Acts of Parliament) Order 1937, SR & O 1937/230, art 2, Schedule).

10 For the meaning of 'military service' see PARA 412 note 4 ante.

11 For the meaning of 'naval service' see PARA 412 note 4 ante.

12 Foreign Enlistment Act 1870 s 21 (amended by the Customs and Excise Management Act 1979 s 177(1), Sch 4 para 1; the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I; and the Isle of Man (Transfer of Functions) Order 1980, SI 1980/399, art 2, Schedule para 1; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). Nothing contained in the Foreign Enlistment Act 1870, however, derogates from the power of the Court of Admiralty (now the Admiralty Division of the High Court: see note 19 *infra*) to direct any ship to be seized or detained by any officer by whom that court has power under its ordinary jurisdiction to direct a ship to be seized or detained: see s 21. Subject to the provisions of the Foreign Enlistment Act 1870 providing for the award of damages by the court in certain cases in respect of the seizure or detention of a ship, no damages are payable, and no such officer as is mentioned in heads (1)-(4) in the text is responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of that Act: s 28. Such officers are referred to in the statute as 'the local authority': see s 21. As to the Defence Council see ARMED FORCES vol 2(2) (Reissue) PARA 2; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 443 et seq.

13 I.e. any constable or officers of police, or any officers of the army, navy or marines of the Crown, or any officers of Her Majesty's Revenue and Customs, or any harbour master or dock master, or any officers having authority by law to make seizures of ships: see *ibid* s 22 (amended by the Customs and Excise Management Act 1979 Sch 4 para 1; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).

14 Foreign Enlistment Act 1870 s 22.

15 *Ibid* s 22. See also s 28 (see note 12 *supra*).

16 As to the Secretary of State see PARA 413 note 14 ante. 'The chief executive authority' means: (1) in Jersey, the Lieutenant Governor; (2) in Guernsey, Alderney and Sark and the dependent islands, the Lieutenant Governor; (3) in the Isle of Man, the Governor in Council; and (4) in any British possession, the governor: see *ibid* s 26 (amended by the Northern Ireland (Modification of Enactments--No 1) Order 1973, SI 1973/2163, art 14(2), Sch 6; and the Isle of Man (Transfer of Functions) Order 1980, SI 1980/399, Schedule para 2).

17 As to the meaning of 'built' see PARA 413 note 3 ante; and as to the meaning of 'equipped' see PARA 413 note 8 ante.

18 Foreign Enlistment Act 1870 s 23.

19 I.e. the Admiralty Division of the High Court: see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 135 et seq. As to the jurisdiction of that court under the Foreign Enlistment Act 1870 see ss 16-20; and see also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1061. Nothing contained in the Foreign Enlistment Act 1870 is to subject to forfeiture any commissioned ship of any foreign state, or to give to any British court over

or in respect of any ship entitled to recognition as a commissioned ship of any foreign state any jurisdiction which it would not have had if the Act had not been passed: s 32. For the meaning of 'foreign state' see PARA 412 note 5 ante.

20 Ibid s 23.

21 Ibid s 23. There is a right of appeal against any decision of the court under these provisions: see s 27.

22 See ibid s 23.

23 Ibid s 23. The court also has power to make a like order for the indemnity of the owner, on his application, in cases where the ship is released by the order of the Secretary of State or the chief executive authority before any application is made by the owner or his agent to the court for such release: see s 23. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

24 Where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges and expenses incurred by the owner in or about any proceedings for the condemnation of the ship must be added to the costs and damages payable to him in respect of the detention of the ship: ibid s 23.

25 Ibid s 23.

26 See ibid s 24.

27 See ibid s 24. Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of such a communication without issuing his warrant, the owner of the ship must be indemnified by the payment of costs and damages in respect of the detention upon application to the court in like manner as he is entitled to be indemnified where the Secretary of State has issued his warrant and releases the ship before any application is made by the owner or his agent to the court for such release: s 24.

28 Ibid s 25.

29 See ibid s 29.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(1) IN GENERAL/416. The laws of war.

3. INTERNATIONAL AGREEMENTS AND CONVENTIONS

(1) IN GENERAL

416. The laws of war.

The laws of war¹ are the rules which govern the conduct of war or other armed conflict². They are binding upon both belligerents and upon neutrals. They are binding not only upon states, but also upon individuals, and in particular upon members of armed forces³. The laws of war, as part of international law, consist partly of customary rules which have been evolved by practice and partly of written rules expressly agreed upon by states in international agreements⁴.

1 The laws of war are also known as international humanitarian law, defined as 'international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict': Commentary on the Additional Protocols of 10 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross (Geneva, 1987) p xxvii.

2 These rules apply in cases of armed conflict whether the conflict is lawful or unlawful in its inception under the rules of international law, particularly the Charter of the United Nations (see PARA 401 note 4 ante).

3 The argument that the laws of war are binding upon states only and not upon individuals was emphatically rejected by the International Military Tribunal at Nuremberg in its judgment of 30 September 1946 upon the cases of German War Criminals (Cmd 6964) 41. All the war crimes trials conducted after the 1939-45 war have proceeded upon the basis of individual responsibility. See also *The Prosecutor v Dusko Tadic* (2 October 1995, unreported), International Tribunal for the Former Yugoslavia, Appeals Chamber. As to the International Tribunal for the Former Yugoslavia see PARA 463 post.

4 See *Schiffahrt-Treuhand GmbH v HM Procurator-General* [1953] AC 232 at 261-262, [1953] 1 All ER 364 at 372, PC. As to international agreements see PARA 417 post. References to the laws and customs of war may be found in the War Crimes Act 1991 s 1(1)(b); and references to laws and customs applicable in international armed conflict may be found in the International Criminal Court Act 2001 s 50(1), Sch 8 art 8.2(b), and in the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 art 3 (adopted by UN Security Council Resolution 827 (25 May 1993)) as set out in the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716 (amended by SI 1997/1752; SI 1998/1755; SI 2000/1342; SI 2000/3243; SI 2001/412; SI 2001/2563; SI 2005/617). See also PARAS 463-464 post.

UPDATE

416 The laws of war

NOTE 4--SI 1996/716 further amended: SI 2005/3389, SI 2006/1923.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(1) IN GENERAL/417. International agreements and conventions.

417. International agreements and conventions.

Since 1856 there have been many international agreements and conventions¹ to regulate the conduct of war and to lessen the sufferings both of those engaged in it and also of the populations of the countries in which it takes place.

The main agreements are the Hague Conventions and Declarations of 1899² and 1907³, and the Geneva Conventions of 1864, 1906, 1929 and 1949, known as the 'Geneva Red Cross Conventions', and their two additional protocols of 1977⁴. Among others are the Declaration of Paris 1856⁵, dealing with aspects of warfare at sea; the Declaration of St Petersburg 1868⁶, renouncing the use in war of small explosive projectiles; the Geneva Protocol 1925⁷, prohibiting the use in war of gases and bacteriological methods of warfare; the Hague Convention and Protocol of 1954 and its Second Protocol of 1999 on the protection of cultural property in the event of armed conflict⁸; the Genocide Convention⁹; the Environmental Modification Techniques Convention¹⁰; the Biological Weapons Convention¹¹; the Conventional Weapons Convention and its five protocols¹²; and the Chemical Weapons Convention¹³.

Conventions (or treaties) to which the United Kingdom is a party have no direct effect in the law of the United Kingdom unless incorporated by an Act of Parliament¹⁴.

1 In this context, 'conventions' means treaties and denotes written rules. As to whether treaties are a source of law as opposed to a source of obligations see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 2-3, 12 et seq.

2 I.e. the International Convention with respect to the Laws and Customs of War by Land (The Hague, 29 July 1899; TS 11 (1901); Cd 800). See also PARA 418 post.

3 See PARA 418 post.

4 I.e. the Convention for the Amelioration of the Condition of the Wounded and Sick of Armed Forces in the Field (Geneva, 22 August 1864; 55 BFSP 43); the International Convention for the Amelioration of the Condition

of the Wounded and Sick of Armies in the Field (Geneva, 6 July 1906; 99 BFSP 968; Cd 3502); the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 27 July 1929; TS 36 (1931); Cmd 3940); the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (see PARA 421 note 2 post); the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (see PARA 421 note 3 post); the Convention on the Treatment of Prisoners of War (Geneva, 27 July 1929; TS 37 (1931); Cmd 3941); the Geneva Convention relative to the Treatment of Prisoners of War (see PARA 421 note 4 post); the Geneva Convention relative to the Protection of Civilian Persons in Time of War (see PARA 421 note 5 post); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Geneva, 12 December 1977; Misc 19 (1977); Cmnd 6927) (Protocol I) (adopted 8 June 1977); Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Geneva, 12 December 1977; Misc 19 (1977); Cmnd 6927) (Protocol II) (adopted 8 June 1977). As to the Geneva Red Cross Conventions and the two additional protocols (which are set out in the Schedules to the Geneva Conventions Act 1957) see PARA 421 et seq post.

5 le the Declaration of Paris respecting Maritime Law (Paris, 16 April 1856; 46 BFSP 26).

6 le the Declaration renouncing the Use in Time of War of Explosive Projectiles under 400 Grammes Weight (St Petersburg, 29 November to 11 December 1868; 58 BFSP 16).

7 le the Protocol concerning the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare (Geneva, 17 June 1925; TS 24 (1930); Cmd 3604).

8 le the Final Act, Convention and Protocol on the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954; Misc 6 (1956); Cmd 9837); Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 26 March 1999). The United Kingdom has not yet ratified this convention but has announced its intention to do so (see Department for Culture, Media and Sport, Press Notice 053/04 (14 May 2004)).

9 le the Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 9 December 1948; TS 58 (1970); Cmnd 4421). See further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 429. See also the Genocide Act 1969.

10 le the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques: see PARA 420 note 1 post.

11 le the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction: see PARAS 468-471 post.

12 le the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and its protocols: see PARA 419 note 1 post.

13 le the Convention on the Prohibition of the Development, Production, Stockpiling and the Use of Chemical Weapons and on their Destruction: see PARA 472 et seq post.

14 As to treaties generally see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 71 et seq.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(1) IN GENERAL/418. The Hague Conventions.

418. The Hague Conventions.

At the Hague Conference in 1899, declarations prohibiting the use of asphyxiating gases¹ and expanding bullets² were signed, and at a further Hague conference in 1907 conventions were signed relating to:

- 16 (1) the peaceful settlement of international disputes³;
- 17 (2) the limitation of the use of force to recover contract debts⁴;
- 18 (3) the opening of hostilities⁵;
- 19 (4) the laws and customs of war on land⁶;

- 20 (5) the rights and duties of neutral powers and persons in war on land⁷;
- 21 (6) the status of enemy merchant ships at the outbreak of hostilities⁸;
- 22 (7) the conversion of merchant ships into warships⁹;
- 23 (8) the laying of submarine mines¹⁰;
- 24 (9) bombardment by naval forces in wartime¹¹;
- 25 (10) the adaptation to maritime war of the principles of the Geneva Convention of 1864¹²;
- 26 (11) restrictions on the exercise of the right of capture in naval war¹³;
- 27 (12) the creation of an international prize court¹⁴;
- 28 (13) the rights and duties of neutral powers in naval war¹⁵; and
- 29 (14) the prohibition of the discharge of projectiles from balloons¹⁶.

1 le the Declaration respecting Asphyxiating Gases (The Hague, 29 July 1899; TS 32 (1907); Cd 3751).

2 le the Declaration respecting Expanding Bullets (The Hague, 29 July 1899; TS 32 (1907); Cd 3751).

3 le the Convention for the Pacific Settlement of International Disputes (Hague Convention I) (The Hague, 18 October 1907; TS 6 (1971); Cmnd 4575).

4 le the International Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (Hague Convention II, 'The Porter Convention') (The Hague, 18 October 1907; TS 7 (1910); Cd 5028).

5 le the International Convention relative to the Opening of Hostilities (Hague Convention III) (The Hague, 18 October 1907; TS 8 (1910); Cd 5029).

6 le the International Convention concerning the Laws and Customs of War on Land (Hague Convention IV) (The Hague, 18 October 1907; TS 9 (1910); Cd 5030). To this convention and to the corresponding convention of 1899 are annexed regulations known as the Hague Regulations 1907 (Cd 4175), which reflect customary international law binding on all states. See also *Dutch Machines Case* (1949) Ann Dig 390.

7 le the International Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land (Hague Convention V) (The Hague, 18 October 1907). This convention was not ratified by the United Kingdom.

8 le the International Convention relative to the Status of Enemy Merchant-Ships at the Outbreak of Hostilities (Hague Convention VI) (The Hague, 18 October 1907; TS 10 (1910); Cd 5031).

9 le the International Convention relative to the Conversion of Merchant-Ships into War-Ships (Hague Convention VII) (The Hague, 18 October 1907; TS 11 (1910); Cd 5115).

10 le the International Convention relative to the Laying of Automatic Submarine Contact Mines (Hague Convention VIII) (The Hague, 18 October 1907; TS 12 (1910); Cd 5116).

11 le the International Convention respecting Bombardments by Naval Forces in Time of War (Hague Convention IX) (The Hague, 18 October 1907; TS 13 (1910); Cd 5117).

12 le the International Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906 (Hague Convention X) (The Hague, 18 October 1907; 100 BFSP 415). This convention is now the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea: see PARA 421 et seq post.

13 le the International Convention relative to Certain Restrictions on the Exercise of the Right of Capture in Maritime War (Hague Convention XI) (The Hague, 18 October 1907; TS 14 (1910); Cd 5118).

14 le the International Convention relative to the Establishment of an International Prize Court (Hague Convention XII) (The Hague, 18 October 1907). This convention was not ratified by the United Kingdom.

15 le the International Convention respecting the Rights and Duties of Neutral Powers in Maritime Law (Hague Convention XIII) (The Hague, 18 October 1907; 100 BFSP 448). This convention was not ratified by the United Kingdom.

16 le the International Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons (Hague Convention XIV) (The Hague, 18 October 1907; TS 15 (1910); Cd 5119).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(1) IN GENERAL/419. The Conventional Weapons Convention.

419. The Conventional Weapons Convention.

The Conventional Weapons Convention¹, which the United Kingdom has ratified², contains five protocols. Protocol I prohibits the use of any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays³; Protocol II imposes certain restrictions on the use of mines, booby-traps and other devices⁴; Protocol III prohibits or restricts the use of incendiary weapons⁵; Protocol IV prohibits the employment of laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness⁶; and Protocol V deals with the explosive remnants of war⁷.

The convention and its annexed protocols apply to: (1) all cases of declared war or of any other armed conflict which may arise between two or more of the high contracting parties, even if the state of war is not recognised by one of them, and all cases of partial or total occupation of the territory of a high contracting party, even if the occupation meets with no armed resistance⁸; (2) armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations⁹; and (3) armed conflict not of an international character occurring in the territory of one of the high contracting parties¹⁰.

The Conventional Weapons Convention provides for the establishment of a review conference to consider amendments to any of the protocols¹¹.

1 The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or Have Indiscriminate Effects (New York, 10 April 1981 to 10 April 1982; Misc 23 (1981); Cmnd 8370) (the 'Conventional Weapons Convention 1981').

2 The United Kingdom deposited its instrument of ratification as a high contracting party to this convention on 13 February 1995: 255 HC Official Report (6th series), 23 February 1995, written answers col 280. The United Kingdom became bound by the convention six months after it had deposited the instrument of ratification: Conventional Weapons Convention 1981 art 5 para 2. The United Kingdom is also a party to the first four Protocols to the Convention. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

3 See the Conventional Weapons Convention 1981 Protocol on Non-detectable Fragments (Protocol I) (Geneva, 10 October 1980).

4 See the Conventional Weapons Convention 1981 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices (Protocol II) (Geneva, 10 October 1980). This protocol was amended in 1996: see the Conventional Weapons Convention 1981 Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (CCW/Conf I/144, 1 May 1996). The protocol prohibits the use of anti-personnel mines which are not detectable: see arts 4, 5. As to specifications on detectability see Technical Annex. The protocol imposes certain restrictions on the use of remotely-delivered mines (see art 6), prohibits the use of booby-traps and other devices (see art 7), prohibits the transfer of mines whose use is prohibited by the protocol (see art 8), and imposes an obligation to record minefields, mined areas, mines, booby-traps and other devices (see art 9). After the cessation of active hostilities all minefields, mined areas, mines, booby-traps and other devices are to be cleared, removed or destroyed: see art 10. The exchange of technological information and equipment is provided for in art 11. Each high contracting party is also required to take such measures as are feasible to protect a United Nations peacekeeping, observation or similar force or mission, or certain humanitarian or fact-finding missions, from the effects of mines, booby-traps and other devices in the area it controls: see art 12. The high contracting parties undertake to consult and co-operate with each other on all issues relating to the operation of the protocol: see art 13. Each high contracting party is required to take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this protocol

by persons or on territory under its jurisdiction or control: see art 14. It is not anticipated that legislation will be required to enable the United Kingdom to comply with this requirement, since art 14 requires parties to ensure the imposition of penal sanctions against persons who, contrary to the provisions of the protocol, wilfully kill or cause serious injury to civilians. Within the United Kingdom the criminal law is adequate for this purpose. If the acts are committed abroad they will almost certainly be committed by members of the armed forces, who are subject to the criminal law of England and Wales wherever they are serving: see the Army Act 1955 s 70 (as amended); the Air Force Act 1955 s 70 (as amended); the Naval Discipline Act 1957 s 42 (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 422. As to landmines see also PARA 497 et seq post.

5 See the Conventional Weapons Convention 1981 Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) (Geneva, 10 October 1980).

6 See the Conventional Weapons Convention 1981 Protocol on Blinding Laser Weapons (Protocol IV) (13 October 1995).

7 See the Conventional Weapons Convention 1981 Protocol on Explosive Remnants of War (Protocol V) (28 November 2003). The United Kingdom is a party only to the first four Protocols to the Convention: see note 2 supra.

8 In the situations described in the Geneva Conventions Act 1957 Sch 1 art 2, Sch 2 art 2, Sch 3 art 2, Sch 4 art 2: see the Conventional Weapons Convention 1981 art 1; and PARA 422 post. As to the Geneva Red Cross Conventions 1949 (which are set out in the Schedules to the Geneva Conventions Act 1957) see PARA 421 et seq post.

9 In the situation described in the Geneva Conventions 1949 Protocol I art 1 para 4: see the Conventional Weapons Convention 1981 art 1. As to the application and implementation of the Geneva Conventions 1949 Protocol I see PARAS 421-422 post. The declaration referred to is the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States (General Assembly Resolution 2625 (XXV), 24 October 1970). As to the Charter of the United Nations see PARA 401 note 4 ante.

10 In the situation described in the Geneva Conventions Act 1957 Sch 1 art 3, Sch 2 art 3, Sch 3 art 3, Sch 4 art 3 (see PARA 421 et seq post): see the Conventional Weapons Convention 1981 art 1 (amended on 21 December 2001). The convention and protocols do not, however, apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature, as not being armed conflicts: see art 1 (as so amended).

11 See the Conventional Weapons Convention 1981 art 8.

UPDATE

419 The Conventional Weapons Convention

NOTE 4--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(1) IN GENERAL/420. The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques.

420. The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques.

States accepting the obligations within the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques¹ undertake not to engage in military or other hostile use of environmental modification techniques² having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other state party³.

1. The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (Geneva, 18 May 1977; TS 24 (1979); Cmnd 7469). This convention was ratified by the United Kingdom on 16 May 1978. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

2. Is any technique for changing, through the deliberate manipulation of natural processes, the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space: *ibid* art II.

3. See further PARA 452 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(2) GENEVA RED CROSS CONVENTIONS/(i) In general/421. The Geneva Red Cross Conventions.

(2) GENEVA RED CROSS CONVENTIONS

(i) In general

421. The Geneva Red Cross Conventions.

The United Kingdom¹ is a party to the four Geneva Red Cross Conventions of 1949. These are: (1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field²; (2) the Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea³; (3) the Convention relative to the Treatment of Prisoners of War⁴; and (4) the Convention relative to the Protection of Civilian Persons in Time of War⁵. Conventions (or treaties) to which the United Kingdom is a party have no direct effect in the law of the United Kingdom unless incorporated by an Act of Parliament⁶. Certain parts of the Geneva Red Cross Conventions have been incorporated into the law of the United Kingdom by the Geneva Conventions Act 1957⁷, while other provisions have been incorporated in the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957 and by Royal Warrant⁸.

In 1977, two protocols were added to the Geneva Red Cross Conventions of 1949. Protocol I applies to international armed conflict⁹ and Protocol II applies to non-international armed conflict¹⁰. The Geneva Conventions (Amendment) Act 1995 incorporates certain provisions of these protocols into the laws of the United Kingdom¹¹.

The conventions enter into force for a contracting state six months after the deposit of its instrument of ratification or notification of its accession¹². They may be denounced with effect from one year after notification of denunciation, but no denunciation can take effect during a conflict before peace is concluded and until operations connected with release and repatriation of the persons protected by the conventions have been terminated¹³.

An inquiry into alleged violations of the conventions must be instituted at the request of a party to a conflict¹⁴.

1. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

2. The first convention was the Convention for the Amelioration of the Condition of the Wounded and Sick of Armed Forces in the Field (Geneva, 22 August 1864; 55 BFSP 43); revised in the form of the International Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field (Geneva, 6 July 1906; 99 BFSP 968; Cd 3502); and again in the form of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 27 July 1929; TS 36 (1931); Cmd 3940); and now as the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550).

3 le the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550).

4 This was initially the Convention on the Treatment of Prisoners of War (Geneva, 27 July 1929; TS 37 (1931); Cmd 3941); and is now the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550).

5 le the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550).

6 As to treaties generally see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 71 et seq.

7 The four conventions are set out as the Geneva Conventions Act 1957 s 1, Schs 1-4. See also note 11 infra.

The title and preamble to the Geneva Conventions Act 1957 do not make the Geneva Conventions statute: *Cheney v Conn (Inspector of Taxes)* [1968] 1 All ER 779 at 782, [1968] 1 WLR 242 at 247 per Ungood-Thomas J.

The provisions of the Geneva Conventions Act 1957 may be extended by Order in Council, subject to such exceptions and modifications as may be specified in the order, to the Channel Islands, the Isle of Man and any colony: s 8(2) (amended by the Geneva Conventions (Amendment) Act 1995 s 5(b)). The Geneva Conventions Act 1957, except ss 4, 8(2), was extended to the territories specified in the Order by the Geneva Conventions Act (Colonial Territories) Order in Council 1959, SI 1959/1301. It has also been extended, with modifications, to Guernsey (see the Geneva Conventions Act (Guernsey) Order 1966, SI 1966/948), Jersey (see the Geneva Conventions Act (Jersey) Order 1966, SI 1966/949) and the Isle of Man (see the Geneva Conventions Act (Isle of Man) Order 1970, SI 1970/1677). For the practical application of the Geneva Conventions Act 1957 see Rowe (ed) *The Gulf War 1990-91 in International and English Law* (1993) Appendix I.

8 See eg the Army Act 1955 s 30 (as amended); the Air Force Act 1955 s 30 (as amended); and the Naval Discipline Act 1957 s 5 (as substituted) (see ARMED FORCES vol 2(2) (Reissue) PARA 398). See also the Royal Warrant Governing the Maintenance of Discipline among Prisoners of War dated 7 August 1958 (amended by the Royal Warrants dated 13 January 1965 and 2 December 1968), Schedule 1 of which sets out the Prisoner of War Determination of Status Regulations and Schedule 2 of which sets out the Prisoners of War (Discipline) Regulations.

9 le the Protocol, additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts done on 10 June 1977 (Geneva, 12 December 1977; Misc 19 (1977); Cmnd 6927) (Geneva Conventions 1949 Protocol I): see the Geneva Conventions Act 1957 s 7(1) (definition added by the Geneva Conventions (Amendment) Act 1995 s 4(1), (4)).

The term 'armed conflict' is not defined in any of the conventions. It is, however, considered to be 'a difference arising between two states and leading to the intervention of armed forces': Commentary on the Geneva Convention I of 12 August 1949 (Jean Pictet, ed) International Committee of the Red Cross (Geneva, 1952) p 32). An armed conflict exists whenever there is a resort to armed force between states: *The Prosecutor v Dusko Tadic* (2 October 1995, unreported), International Tribunal for the Former Yugoslavia, Appeals Chamber, per Cassese P at para 70. As to the International Tribunal for the Former Yugoslavia see PARA 463 post.

10 le the Protocol, additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts done on 10 June 1977 (Geneva, 12 December 1977; Misc 19 (1977); Cmnd 6927) (Geneva Conventions 1949 Protocol II): see the Geneva Conventions Act 1957 s 7(1) (definition added by the Geneva Conventions (Amendment) Act 1995 s 4(1), (6)).

11 Protocol I and Protocol II are set out in the Geneva Conventions Act 1957 Schs 5, 6 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). The Geneva Conventions (Amendment) Act 1995 has been extended, subject to modifications, to the territories specified in the Order by the Geneva Conventions (Amendment) Act (Overseas Territories) Order 2002, SI 2002/1076. It has also been extended, with modifications, to Guernsey (see the Geneva Conventions Act (Guernsey) Order 1999, SI 1999/1316), Jersey (see the Geneva Conventions Act (Jersey) Order 1999, SI 1999/1744) and the Isle of Man (see the Geneva Conventions Act (Isle of Man) Order 1999, SI 1999/1744).

If the ratification by the United Kingdom of Protocol I or Protocol II is subject to any reservation or accompanied by a declaration, it may be certified by Order in Council that such a reservation or declaration has been made and the protocol must for the purposes of the Geneva Conventions Act 1957 be construed subject to and in accordance with such a reservation or declaration: Geneva Conventions Act 1957 s 7(3) (added by the Geneva Conventions (Amendment) Act 1995 s 4(1), (7)). If such a reservation or declaration is withdrawn wholly or partially, an Order in Council under the Geneva Conventions Act 1957 s 7(3) (as added) may certify that fact and revoke or amend any Order in Council containing the terms of that reservation or declaration: s 7(4) (added by the Geneva Conventions (Amendment) Act 1995 s 4(1), (7)). As to the reservations and declarations made by the United Kingdom on ratification of Protocol I see the Geneva Conventions Act (First Protocol) Order 1998, SI 1998/1754. If Protocol I is further revised under art 98, the Geneva Conventions Act 1957 Sch 5 (as added) may be amended by Order in Council so as to ensure that it sets out the text of Protocol I as in force in relation

to the United Kingdom: Geneva Conventions Act 1957 s 7(5) (added by the Geneva Conventions (Amendment) Act 1995 s 4(1), (7)).

12 Geneva Conventions Act 1957 s 7(1), Sch 1 art 58, Sch 2 art 57, Sch 3 art 138, Sch 4 art 153. As to ratification and accession see Sch 1 arts 57, 60-62, Sch 2 arts 56, 59-61, Sch 3 arts 137, 139-141, Sch 4 arts 152, 155-157. As to other matters relating to the execution of the conventions see Sch 1 arts 55, 56, 59, 64, Sch 2 arts 54, 55, 58, 63, Sch 3 arts 127-128, 133-136, 143, Sch 4 arts 144-145, 150-151, 159. As to the procedural matters relating to Protocol I see the Geneva Conventions Act 1957 Sch 5 arts 80-102. As to matters relating to the execution of Protocol II see the Geneva Conventions Act 1957 Sch 6 arts 19-28.

13 Ibid Sch 1 art 63, Sch 2 art 62, Sch 3 art 142, Sch 4 art 158.

14 Ibid Sch 1 art 52, Sch 2 art 53, Sch 3 art 132, Sch 4 art 149.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(2) GENEVA RED CROSS CONVENTIONS/(i) In general/422. Application of the conventions and Protocols.

422. Application of the conventions and Protocols.

The contracting states must respect and ensure respect for the Geneva Red Cross Conventions and Protocol I in all circumstances¹. The conventions apply in all cases of declared war or other armed conflict², even if a state of war is not recognised by one³ state⁴. The conventions also apply to all cases of partial or total occupation of the territory of a contracting state, even if there is no armed resistance, and some provisions apply in peacetime⁵. In addition, Protocol I⁶ applies to armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations⁷ and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations⁸. Protocol II⁹ applies to all other armed conflicts which take place in the territory of a high contracting party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement Protocol II¹⁰. However, Protocol II does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature, as not being armed conflicts¹¹. The high contracting parties must also, in peacetime, endeavour to train qualified personnel to facilitate the application of the Geneva Red Cross Conventions and of Protocol I, and in particular the activities of the protecting powers¹².

If one of the parties to the conflict is not a party to the conventions, the states who are parties remain bound by them in their mutual relations, and in relation to the party to the conflict which is not a party to the conventions, if the latter accepts and applies their provisions¹³.

1 Geneva Conventions Act 1957 s 7(1), Sch 1 art 1, Sch 2 art 1, Sch 3 art 1, Sch 4 art 1, Sch 5 art 1(1) (Schs 5, 6 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). This obligation is a wide one since it includes a requirement on the United Kingdom to ensure respect for the Geneva Red Cross Conventions even in respect of armed conflicts in which it is not a participant. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) 43 ILM 1009 at para 159 (where the International Court of Justice held that all states parties to the fourth Geneva Convention are under an obligation, while respecting the Charter of the United Nations (see note 7 *infra*) and international law, to ensure compliance by Israel with international humanitarian law as embodied in that convention). Compare the more limited reach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) and the Human Rights Act 1998: see *R (on the application of Al-Skeini) v Secretary of State for Defence* [2004] EWHC 2911 (Admin), [2005] 2 WLR 1401. As to the Geneva Red Cross Conventions and their two protocols (which are set out in the Schedules to the Geneva Conventions Act

1957) see PARAS 421 ante, 424 et seq post. As to the application of Protocol II see the text and notes 9-11 infra; and PARA 423 post.

2 As to the meaning of 'armed conflict' see PARA 421 note 9 ante.

3 For the view that this should read 'by one or both' see 2 Oppenheim's International Law (7th Edn, 1952) p 369 n 6.

4 See the Geneva Conventions Act 1957 Sch 1 art 2, Sch 2 art 2, Sch 3 art 2, Sch 4 art 2, Sch 5 art 1(3) (as added: see note 1 supra). In 1982, despite the existence of an armed conflict, the United Kingdom government did not consider that a state of war existed between the United Kingdom and Argentina: see PARA 406 note 6 ante. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

As to the application of the conventions to forces on board ship, and to forces put ashore see Sch 2 art 4.

5 See *ibid* Sch 1 arts 2, 26, 44, 47, 49, Sch 2 arts 2, 44, 48, 50, Sch 3 arts 2, 127, 129, Sch 4 arts 2, 38, 144, 146, Sch 5 art 18 para 7, art 66 para 7, art 83 para 1, Sch 6 art 19 (Schs 5, 6 as added: see note 1 supra).

6 The conventions and Protocol I apply from the beginning of any situation referred to in Protocol I art 1 and the application of the conventions and Protocol I cease, in the territory of parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons continue to benefit from the relevant provisions of the conventions and Protocol I until their final release, repatriation or re-establishment: Geneva Conventions Act 1957 Sch 5 art 3 (as added: see note 1 supra). By way of an example, the occupation of Iraq ended on 30 June 2004 (see UN Security Resolution 1546 (8 June 2004) PARA 2) when the interim government of Iraq asserted the full sovereignty of that state. From that date, the armed forces of the United Kingdom were present in Iraq as part of a multinational force at the request of the interim government; they were, however, subject to the rights and obligations imposed by UN Security Resolution 1546 (see *R (on the application of Al-Jedda) v Secretary of State for Defence* [2005] EWHC 1809 (Admin)).

7 I.e. the Charter of the United Nations: see PARA 401 note 4 ante.

8 Geneva Conventions Act 1957 Sch 5 art 1 para 4 (as added: see note 1 supra). Protocol I supplements the Geneva Red Cross Conventions and applies in the situations referred to in the Geneva Conventions Act 1957 Sch 1 art 2, Sch 2 art 2, Sch 3 art 2, Sch 4 art 2: Sch 5 art 1 para 3 (as so added). The declaration referred to is the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States (General Assembly Resolution 2625 (XXV), 24 October 1970).

In cases not covered by Protocol I or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience: Geneva Conventions Act 1957 Sch 5 art 1 para 2 (as so added). The application of the conventions and Protocol I and the conclusion of special agreements does not affect the legal status of the parties to the conflict: Geneva Conventions Act 1957 Sch 5 art 4 (as so added).

9 As to Protocol II see PARAS 421 ante, 423 post.

10 Geneva Conventions Act 1957 Sch 6 art 1 para 1 (as added: see note 1 supra). An armed conflict, in this context, exists whenever 'there is protracted violence between governmental authorities and organised armed groups or between such groups within a state': *The Prosecutor v Dusko Tadic* (2 October 1995, unreported), International Tribunal for the Former Yugoslavia, Appeals Chamber, at para 70 per Cassese P. This illustrates the level of activity of the armed conflict and the degree of organisation that the dissident forces or other organised groups must establish before Protocol II will come into operation. As to the International Tribunal for the Former Yugoslavia see PARA 463 post.

11 Geneva Conventions Act 1957 Sch 6 art 1 para 2 (as added: see note 1 supra). Protocol II is not to be invoked for the purpose of affecting the sovereignty of a state or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the state, or to defend the national unity and territorial integrity of the state: Geneva Conventions Act 1957 Sch 6 art 3 para 1 (as so added). Protocol II is not to be invoked as a justification for intervening, directly or indirectly, for any reason, in the armed conflict or in the internal or external affairs of the high contracting party in the territory of which that conflict occurs: Geneva Conventions Act 1957 Sch 6 art 3 para 2 (as so added).

12 *Ibid* Sch 5 art 6 para 1 (as added: see note 1 supra). This is to be done with the assistance of the national Red Cross societies: see Sch 5 art 6 (as so added). As to meetings to consider general problems concerning the application of the conventions and of Protocol I see the Geneva Conventions Act 1957 Sch 5 art 7 (as so added). For the meaning of 'protecting power' see PARA 437 post.

13 See *ibid* Sch 1 art 2, Sch 2 art 2, Sch 3 art 2, Sch 4 art 2, Sch 5 art 96 para 2 (as added: see note 1 *supra*). In relation to an armed conflict governed by Sch 5 art 1 para 4 (as added) (see the text to notes 7-8 *supra*), the authority representing the people engaged in armed conflict against the state may undertake to apply the conventions and Protocol I: see the Geneva Conventions Act 1957 Sch 5 art 96 para 3 (as so added).

UPDATE

422 Application of the conventions and Protocols

NOTE 1--*Al-Skeini*, cited, affirmed: [2007] UKHL 26, [2008] 1 AC 153.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(2) GENEVA RED CROSS CONVENTIONS/(i) In general/423. Conflicts not of an international character.

423. Conflicts not of an international character.

In the case of armed conflict not of an international character (such as a civil war) each party to the conflict must treat humanely persons who take no active part in the hostilities, including members of the armed forces who have laid down their arms or are rendered unable to take part by reason of sickness, wounds, detention or other cause, without distinction founded on race, colour, religion or faith, sex, birth or wealth or any other similar criteria¹. Violence to life and person, including murder, mutilation, cruel treatment or torture, the taking of hostages, outrages upon personal dignity, in particular humiliating and degrading treatment, and the passing of sentences and carrying out of executions without previous judgment by a regularly constituted court, is prohibited². The wounded and sick must be collected and cared for³; and an impartial humanitarian body may offer its services to the parties to the conflict⁴.

Protocol II⁵ develops and supplements these provisions⁶ without modifying their existing conditions of application⁷. It provides that all persons⁸ who do not take a direct part or who have ceased to take part in hostilities are entitled to respect for their person, honour and convictions and religious practices⁹. They are to be treated humanely in all circumstances, without any adverse distinction¹⁰. Children are to be provided with the care and aid they require¹¹. The wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, are to be respected and protected and treated humanely¹². All measures must be taken to search for, and collect, the wounded, sick and shipwrecked¹³. Medical and religious personnel are to be respected and protected and granted all available help for the performance of their duties¹⁴. No one may be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefitting¹⁵. Medical units and transports are to be respected and protected at all times and are not to be the object of attack¹⁶, unless a warning that they have been used to commit hostile acts outside their humanitarian function has remained unheeded after a reasonable time limit¹⁷. Medical and religious personnel, medical units and transports may, under the direction of the competent authority, display the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground¹⁸.

Protocol II contains obligations to protect the civilian population from the effects of an armed conflict. Civilians are protected against the dangers arising from military operations and must not be the object of attack unless they take a direct part in hostilities¹⁹. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population²⁰. Protection is given to works and installations containing dangerous forces, which must not be attacked, even where those objects are military objectives, if such an attack would cause the release of dangerous forces and consequent severe losses amongst the civilian population²¹. Cultural objects and places of worship, which constitute the cultural or spiritual

heritage of peoples, are not to be attacked²². There must be no forced movement of the civilian population unless the security of the civilians or imperative military reasons so demand²³. A high contracting party may give permission for the operation of relief actions where the civilian population is suffering undue hardship owing to the lack of the supplies essential for its survival²⁴.

There is no concept of lawful combatant or prisoner of war in a non-international armed conflict. Individuals who take part in the armed conflict are, in consequence, subject to the law of the state in whose territory the conflict is taking place. They are therefore liable to prosecution for criminal acts related to the armed conflict²⁵. Persons whose liberty has been restricted must be treated humanely and, if it is decided to release them, necessary measures to ensure their safety must be taken²⁶. Protocol II requires that a person may only be prosecuted and punished in relation to a criminal offence by a court offering the essential guarantees of independence and impartiality²⁷.

Apart from the Geneva Conventions 1949²⁸ and Protocol II, it is becoming common for modern treaties specifically to extend their application to non-international armed conflicts²⁹. In addition, there is a growing acceptance that many of the prohibitions contained in the Geneva Conventions 1949 and Protocol I apply, *mutatis mutandis*, to non-international armed conflict³⁰.

1 Geneva Conventions Act 1957 s 7(1), Sch 1 art 3(1), Sch 2 art 3(1), Sch 3 art 3(1), Sch 4 art 3(1).

2 Ibid Sch 1 art 3(1), Sch 2 art 3(1), Sch 3 art 3(1), Sch 4 art 3(1).

3 Ibid Sch 1 art 3(2), Sch 2 art 3(2), Sch 3 art 3(2), Sch 4 art 3(2).

4 Ibid Sch 1 art 3, Sch 2 art 3, Sch 3 art 3, Sch 4 art 3. The parties to such conflict should try to bring into force by means of special agreements all or part of the provisions of all four Geneva Red Cross Conventions (see PARA 421 ante); and the application of these articles does not affect the legal status of the parties to the conflict: see the Geneva Conventions Act 1957 Sch 1 art 3, Sch 2 art 3, Sch 3 art 3, Sch 4 art 3. The Conventions are set out in the Geneva Conventions Act 1957 Schedules 1-4.

A special agreement was entered into by the various parties involved in the armed conflict in Bosnia on 22 May 1992. It was stated to be 'without prejudice to the legal status of the parties to the conflict or to the international law of armed conflict in force' (ie whether the conflict was of an international or non-international character). The break-up of the former Yugoslavia illustrates the difficulty, in certain armed conflicts, of determining whether the conflict is an international or a non-international one at any given time.

5 As to the application and implementation of Protocol II see PARAS 421-422 ante. Protocol II is set out in the Geneva Conventions Act 1957 Schedule 6 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule).

6 Ie the Geneva Conventions Act 1957 Sch 1 art 3, Sch 2 art 3, Sch 3 art 3, Sch 4 art 3: see the text to notes 1-4 supra.

7 See *ibid* Sch 6 art 1 para 1 (as added: see note 5 supra).

8 Protocol II applies without adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth, status, or on any other similar criteria to all persons affected by an armed conflict: see the Geneva Conventions Act 1957 Schedule 6 art 2 para 1 (as added: see note 5 supra).

9 See *ibid* Sch 6 art 4 para 1 (as added: see note 5 supra).

10 See *ibid* Sch 6 art 4 para 1 (as added: see note 5 supra). It is prohibited to order that there are to be no survivors: Sch 6 art 4 para 1 (as so added). Acts, or the threat of acts, such as violence to life, health and physical or mental well-being, cruel treatment (such as torture, mutilation or corporal punishment), collective punishments, taking of hostages, acts of terrorism, outrages upon personal dignity (in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault), slavery and pillage are prohibited at any time: see Sch 6 art 4 para 2 (as so added).

11 See *ibid* Sch 6 art 4 para 3 (as added: see note 5 supra). In particular: (1) children must receive an education; (2) steps must be taken to reunite separated families; (3) children under the age of 15 are to be

given special protection and are not to be recruited into the armed forces; (4) measures are to be taken to remove children temporarily from the area of hostilities: see Sch 6 art 4 para 3 (as so added).

12 See *ibid* Sch 6 art 7 (as added: see note 5 *supra*). There must be no distinction among them founded on any grounds other than medical ones: see Sch 6 art 7 para 2 (as so added).

13 See *ibid* Sch 6 art 8 (as added: see note 5 *supra*). The dead must be searched for and decently disposed of: see Sch 6 art 8 (as so added).

14 See *ibid* Sch 6 art 9 (as added: see note 5 *supra*).

15 See *ibid* Sch 6 art 10 para 1 (as added: see note 5 *supra*). Persons engaged in medical activities are protected from being penalised for refusing or failing to give information concerning the wounded and sick who are, or have been, in their care: see Sch 6 art 10 para 4 (as so added).

16 See *ibid* Sch 6 art 11 para 1 (as added: see note 5 *supra*).

17 See *ibid* Sch 6 art 11 para 2 (as added: see note 5 *supra*).

18 See *ibid* Sch 6 art 12 (as added: see note 5 *supra*); and PARA 432 *post*.

19 See *ibid* Sch 6 art 13 (as added: see note 5 *supra*).

20 See *ibid* Sch 6 art 14 (as added: see note 5 *supra*). Such indispensable objects include foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works: see Sch 6 art 14 (as so added). Starvation of civilians as a method of combat is specifically prohibited: see Sch 6 art 14 (as so added).

21 See *ibid* Sch 6 art 15 (as added: see note 5 *supra*). Dangerous forces include dams, dykes and nuclear generating stations: see Sch 6 art 15 (as so added). Article 15 assumes that such objects would be military objectives, as to which see Protocol I art 52 para 2; and PARA 452 text and note 6 *post*. As to Protocol I generally see the Geneva Conventions Act 1957 Sch 5 (as added); and PARA 421 *ante*. As to its application and implementation see PARAS 421-422 *ante*.

22 See *ibid* Sch 6 art 16 (as added: see note 5 *supra*). See also the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954; Misc 6 (1956); Cmd 9837). The United Kingdom has not yet ratified this convention but has announced its intention to do so (see Department for Culture, Media and Sport, Press Notice 053/04 (14 May 2004)).

23 See the Geneva Conventions Act 1957 Sch 6 art 17 (as added: see note 5 *supra*).

24 See *ibid* Sch 6 art 18 para 2 (as added: see note 5 *supra*). Relief societies located in the territory of a high contracting party may offer their services: see Sch 6 art 18 para 1 (as so added).

25 See generally CRIMINAL LAW, EVIDENCE AND PROCEDURE.

26 See the Geneva Conventions Act 1957 Sch 6 art 5 (as added: see note 5 *supra*). Persons whose liberty has been restricted must: (1) be treated and cared for in accordance with Sch 6 art 7 (as added) (see the text and note 12 *supra*) if they are wounded or sick; (2) be provided, to the same extent as the civilian population, with food and drinking water; (3) be allowed individual or collective relief; (4) be allowed to practise their religion; and (5) if made to work, have the benefit of working conditions similar to those enjoyed by the local civilian population: see Sch 6 art 5 para 1 (as so added).

27 See *ibid* Sch 6 art 6 para 2 (as added: see note 5 *supra*). These guarantees include: (1) informing the accused of the particulars of the offence without delay; (2) individual penal responsibility; (3) no one being guilty on account of any act or omission which was not a criminal offence at the time of commission; (4) innocence until guilt proven; (5) the right of the accused to be tried in his presence; (6) the right of the accused not to be compelled to testify against himself or to confess guilt: see Sch 6 art 6 para 2 (as so added). Sch 6 art 6 (as added) is sufficiently widely drawn as to give authority for dissident armed forces or organised groups, as envisaged by Sch 6 art 1 para 1 (as added), to hold courts, which themselves must offer the essential guarantees of independence and impartiality.

28 See *ibid* Sch 1 art 3, Sch 2 art 3, Sch 3 art 3, Sch 4 art 3.

29 See eg the Conventional Weapons Convention 1981 Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (CCW/Conf I/144, 1 May 1996); the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction, 18 September 1997 ('the Ottawa Convention') (Cm 3990) (see PARA 497 *et seq post*), the extension of the

Conventional Weapons Convention (see PARA 419 ante) to non-international armed conflicts, and the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999, art 22. See also the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954; Misc 6 (1956); Cmd 9837) art 19.

30 See Henckaerts and Doswald-Beck (eds) *Customary International Humanitarian Law* (2005).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(2) GENEVA RED CROSS CONVENTIONS/(i) In general/424. Grave breaches and abuse of the conventions and Protocol I.

424. Grave breaches and abuse of the conventions and Protocol I.

Any person, whatever his nationality, who, whether in or outside the United Kingdom¹, commits or aids, abets or procures the commission by any other person of a grave breach of any of the Geneva Red Cross Conventions or Protocol I² is guilty of an offence³.

Grave breaches of the Geneva Red Cross Conventions are those involving any of the following acts, if committed against persons or property protected by the relevant convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health⁴, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly⁵, compelling a prisoner of war or civilian⁶ to serve in the forces of a hostile power or wilfully depriving him of the rights of fair and regular trial⁷, and unlawful deportation or transfer or unlawful confinement of a civilian and taking of hostages⁸.

The grave breaches in Protocol I include the subjection of a person, who is in the power of a state other than the one on which he depends, to such acts as physical mutilations, medical or scientific experiments, removal of tissue organs for transplantation⁹ or medical procedures inconsistent with generally accepted medical standards¹⁰. It is also a grave breach of the protocol, wilfully, in violation of the relevant provisions of the protocol, and causing death or serious injury to body or health: (1) to make civilians the object of an attack¹¹; (2) to launch an indiscriminate attack against the civilian population or civilian objects¹²; (3) to launch an attack against works or installations containing dangerous forces¹³; (4) to make non-defended localities and de-militarised zones the object of attack¹⁴; (5) to make a person the object of an attack in the knowledge that he is hors de combat¹⁵; and (6) to use the distinctive emblems perfidiously¹⁶.

When committed wilfully, and in violation of the conventions or the protocol, the following are regarded as grave breaches of the protocol: (a) the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of the population of the occupied territory within or outside this territory¹⁷; (b) an unjustifiable delay in the repatriation of prisoners of war or civilians¹⁸; (c) practices of apartheid or other inhuman and degrading practices based on racial discrimination¹⁹; (d) in certain circumstances, making the cultural or spiritual heritage of peoples the object of attack²⁰; (e) depriving a protected person of the rights of fair and regular trial²¹. All grave breaches of the Geneva Red Cross Conventions or of Protocol I are regarded as war crimes²².

A grave breach of the Geneva Red Cross Conventions or of Protocol I is an offence triable only on indictment²³. Proceedings for an offence must not be instituted in England and Wales without the consent of the Attorney General²⁴. If the offence is not committed in the United Kingdom proceedings may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom²⁵. A person convicted of an offence involving murder must be dealt with as for an offence of murder²⁶. In any other case a person convicted of an offence is liable to imprisonment for a term not exceeding 30 years²⁷.

1 In the extension of the Geneva Conventions Act 1957 to a territory etc by the orders cited in PARA 421 note 7 ante, a reference to the territory etc is to be substituted for 'United Kingdom': see the Geneva Conventions Act (Colonial Territories) Order in Council 1959, SI 1959/1301, art 2, Sch 2 para 1; the Geneva Conventions Act (Guernsey) Order 1966, SI 1966/948, art 1, Schedule para 1; the Geneva Conventions Act (Jersey) Order 1966, SI 1966/949, art 1, Schedule para 1; and the Geneva Conventions Act (Isle of Man) Order 1970, SI 1970/1677, art 2, Schedule para 1. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

2 There are no grave breach provisions in Protocol II. As to the application and implementation of Protocols I and II (which are set out in the Geneva Conventions Act 1957 Schs 5, 6 (as added)) see PARAS 421-422 ante; and as to the Geneva Red Cross Conventions (which are set out in the Geneva Conventions Act 1957 Schs 1-4) see PARA 421 ante.

3 Geneva Conventions Act 1957 ss 1(1), 7(1) (s 1(1) amended by the Geneva Conventions (Amendment) Act 1995 s 1(1), (2); and the International Criminal Court Act 2001 ss 70(1)(a), 83, Sch 10; and the Geneva Conventions Act 1957 s 7(1) amended by the Geneva Conventions (Amendment) Act 1995 s 4(1), (4)). As to the legal representation of persons brought up for trial see PARA 442 post.

As to the obligations of high contracting parties with respect to grave breaches of, and acts contrary to, the Geneva Red Cross Conventions see the Geneva Conventions Act 1957 Sch 1 arts 49, 51, Sch 2 arts 50, 52, Sch 3 arts 129, 131, Sch 4 arts 146, 148.

4 See *ibid* s 1(1A) (added by the Geneva Conventions (Amendment) Act 1995 s 1(3)); and the Geneva Conventions Act 1957 Sch 1 art 50, Sch 2 art 51, Sch 3 art 130, Sch 4 art 147.

5 See *ibid* s 1(1A) (as added: see note 4 *supra*), Sch 1 art 50, Sch 2 art 51, Sch 4 art 147.

6 *Ie* a protected person within *ibid* Sch 4 art 4: see PARA 445 post.

7 See *ibid* s 1(1A) (as added: see note 4 *supra*), Sch 3 art 130, Sch 4 art 147.

8 See *ibid* s 1(1A) (as added: see note 4 *supra*), Sch 4 art 147.

9 *Ie* other than in accordance with *ibid* Sch 5 art 11 paras 1, 3 (as added).

10 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 11 paras 2-4 (Sch 5 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule).

11 *Ie* contrary to the Geneva Conventions Act 1957 Sch 5 art 51 (as added): s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 3(a) (as added: see note 10 *supra*).

12 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 3(b) (as added: see note 10 *supra*). Such an attack is contrary to Sch 5 art 57 para 2(a)(iii) (as added).

13 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 3(c) (as added: see note 10 *supra*). Such an attack is contrary to Sch 5 arts 56, 57 para 2(a)(iii) (as added).

14 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 3(d) (as added: see note 10 *supra*). Such an attack is contrary to Sch 5 arts 59, 60 (as added).

15 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 3(e) (as added: see note 10 *supra*). Such an attack is contrary to Sch 5 art 41 (as added).

16 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 3(f) (as added: see note 10 *supra*). Such use is contrary to Sch 5 art 37. As to the distinctive emblems see PARA 432 post.

17 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 4(a) (as added: see note 10 *supra*). Such an act is contrary to Sch 4 art 49.

18 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 4(b) (as added: see note 10 *supra*).

19 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 4(c) (as added: see note 10 *supra*).

20 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 4(d) (as added: see note 10 *supra*). See also Sch 5 art 53 (as added); and PARA 452 post.

21 *Ibid* s 1(1A) (as added: see note 4 *supra*), Sch 5 art 85 para 4(e) (as added: see note 10 *supra*). As to protected persons see Sch 5 arts 44, 45, 73, 85 para 2 (as added); and PARAS 426, 433, 445 post.

22 Ibid Sch 5 art 85 para 5 (as added: see note 10 supra). As to war crimes generally see PARA 463 et seq post.

23 Ibid s 1A(1), (2) (s 1A added by the International Criminal Court Act 2001 s 70(2)).

24 Geneva Conventions Act 1957 s 1A(3) (as added: see note 23 supra).

25 Ibid s 1A(4) (as added: see note 23 supra).

26 Ibid s 1A(5) (as added: see note 23 supra). For these purposes, 'murder' means the killing of a person in such circumstances as would constitute murder if committed in the part of the United Kingdom in which the proceedings are brought: s 1A(6) (as so added). As to the offence of murder see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 89 et seq.

27 Ibid s 1A(7) (as added: see note 23 supra).

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(ii) The Wounded, Sick and Shipwrecked

425. In general.

The first two Geneva Red Cross Conventions are the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field¹, and the Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea². They are basically similar in their character and provisions. Neutral powers³ must apply the provisions of the conventions by analogy to persons protected by these conventions who are received into or interned in their territory⁴.

1 I.e. the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550): see PARA 421 note 2 ante. This convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 1. See PARA 421 ante. As to the execution of the convention see Sch 1 arts 45-48.

2 I.e. the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550): see PARA 421 note 3 ante. The convention is set out in the Geneva Conventions Act 1957 Sch 2. See PARA 421 ante. As to the execution of the convention see Sch 2 arts 46-49.

3 As to medical assistance from neutral countries or vessels see also ibid Sch 1 arts 27, 32, Sch 2 arts 17, 21.

4 Ibid Sch 1 art 4, Sch 2 art 5. See also Sch 5 art 19 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule), which sets out Protocol I art 19. As to the application and implementation of Protocol I see PARAS 421-422 ante. For the categories of protected persons see PARA 426 post.

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426. Protected persons.

The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field¹ and the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea² apply to the wounded and sick, or shipwrecked at sea as the case may be, belonging to the following categories³:

- 30 (1) members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces⁴;
- 31 (2) members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps or organised resistance movements fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates⁵; (b) that of having a fixed distinctive sign recognisable at a distance⁶; (c) that of carrying arms openly⁷; (d) that of conducting their operations in accordance with the laws and customs of war⁸;
- 32 (3) members of regular armed forces who profess allegiance to a government or an authority not recognised by the detaining power⁹;
- 33 (4) persons who accompany the armed forces without actually being members of them, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation from the armed forces which they accompany¹⁰;
- 34 (5) members of crews including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law¹¹;
- 35 (6) inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces¹², without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war¹³.

1 I.e. the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550): see PARA 421 note 2 ante. This convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 1. See PARA 421 ante. The convention applies to protected persons who fall into the hands of the enemy until their final repatriation: see Sch 1 art 5.

2 I.e. the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550): see PARA 421 note 3 ante. This convention is set out in *ibid* Sch 2. See PARA 421 ante.

3 Protocol I (which is set out in the Geneva Conventions Act 1957 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule)) extends the categories of protected persons so that in addition to the categories of persons mentioned in the Geneva Conventions Act 1957 Sch 1 art 13, Sch 2 art 13 (see the text and notes 4-12 *infra*) all members of the armed forces of a party to the conflict (see Sch 5 art 43 (as so added)) are entitled to protection if they are wounded or sick or shipwrecked at sea or in other waters (Sch 5 art 44 para 8 (as so added)). As to the application and implementation of Protocol I see PARAS 421-422 ante.

4 Geneva Conventions Act 1957 Sch 1 art 13(1), Sch 2 art 13(1).

5 *Ibid* Sch 1 art 13(2)(a), Sch 2 art 13(2)(a).

6 *Ibid* Sch 1 art 13(2)(b), Sch 2 art 13(2)(b).

7 *Ibid* Sch 1 art 13(2)(c), Sch 2 art 13(2)(c).

8 *Ibid* Sch 1 art 13(2)(d), Sch 2 art 13(2)(d).

9 *Ibid* Sch 1 art 13(3), Sch 2 art 13(3). As to the detaining power see PARA 439 post.

- 10 Ibid Sch 1 art 13(4), Sch 2 art 13(4).
- 11 Ibid Sch 1 art 13(5), Sch 2 art 13(5).
- 12 This is known as 'levée en masse'.
- 12 Geneva Conventions Act 1957 Sch 1 art 13(6), Sch 2 art 13(6).

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427. General protection.

At all times, and particularly after an engagement, parties to a conflict must take measures to search for and collect the wounded, sick and shipwrecked, protect them from pillage and ensure their adequate care; and the dead must be searched for, and their spoliation prevented¹. Armistices or suspensions of fire must if possible be arranged to allow for the removal, exchange and transport of wounded persons from the battlefield². At all times the wounded, sick and shipwrecked must be treated humanely without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any similar criteria³.

1 Geneva Conventions Act 1957 s 7(1), Sch 1 arts 15, 18, Sch 2 art 18. See also Sch 5 art 33 para 4 (Sch 5 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). As to the application and implementation of Protocol I (which is set out in the Geneva Conventions Act 1957 Sch 5 (as added)) see PARAS 421-422 ante. As to the categories of protected persons see PARA 426 ante.

2 Ibid Sch 1 art 15.

3 Ibid Sch 1 art 12, Sch 2 art 12. Subject to these provisions, the wounded, sick and shipwrecked of a belligerent who fall into enemy hands are prisoners of war: Sch 1 art 14, Sch 2 art 16. If wounded, sick or shipwrecked persons are taken on board a neutral aircraft or warship, it must be ensured, where international law requires, that they take no further part in operations of war: Sch 2 art 15.

See also Sch 5 arts 10, 17 (as added: see note 1 supra). Reprisals against persons and objects protected in Sch 5 Pt II (arts 8-34) (as added) are prohibited: Sch 5 art 20 (as so added). For the purposes of Sch 5 (as added), 'wounded' and 'sick' means persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility; and these terms also cover maternity cases, newborn babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility: Sch 5 art 8(a) (as so added). 'Shipwrecked' means persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility; and these persons, provided that they continue to refrain from any act of hostility, continue to be considered shipwrecked during their rescue until they acquire another status under the conventions or Protocol I: Geneva Conventions Act 1957 Sch 5 art 8(b) (as added: see note 1 supra).

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428. Variation of rights.

The parties to the conventions¹ may conclude special agreements on particular matters, but these must not adversely affect the situation of the wounded, sick or shipwrecked, or medical personnel or chaplains, nor restrict the rights conferred on them by the conventions². Such

persons may in no circumstances renounce in part or whole the rights secured to them under the conventions or under any such special agreements which may have been made³.

1 I.e. the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 2 ante), which is set out in the Geneva Conventions Act 1957 s 7(1), Sch 1; and the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 3 ante), which is set out in the Geneva Conventions Act 1957 Sch 2. See PARA 421 ante.

2 See *ibid* Sch 1 art 6, Sch 2 art 6. The protecting power may assist in settling disagreements between conflicting parties as to the interpretation of the conventions: Sch 1 art 11, Sch 2 art 11. As to the protecting power see PARA 430 post.

3 See *ibid* Sch 1 art 7, Sch 2 art 7.

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429. Information as to the wounded, sick or shipwrecked.

Particulars of shipwrecked, wounded, sick or dead persons must be forwarded to the information bureau for prisoners of war¹.

1 See the Geneva Conventions Act 1957 s 7(1), Sch 1 art 16, Sch 2 art 19. As to the information bureau see PARA 436 post. Burial or cremation must be preceded by a careful examination to confirm death and establish identity: Sch 1 art 17, Sch 2 art 20.

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430. The protecting power.

The conventions¹ must be applied with the co-operation and under the scrutiny of the protecting powers, whose duty it is to safeguard the interests of the parties to the conflict and the protecting powers may appoint delegates for this purpose². The high contracting parties may at any time entrust the duties of the protecting powers to an impartial organisation³. If protection cannot be arranged, the detaining power must request or accept the offer of the services of a humanitarian organisation such as the International Committee of the Red Cross to assume the humanitarian functions of the protecting power⁴.

1 I.e. the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 2 ante), which is set out in the Geneva Conventions Act 1957 s 7(1), Sch 1; and the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 3 ante), which is set out in the Geneva Conventions Act 1957 Sch 2. See PARA 421 ante.

2 See *ibid* Sch 1 art 8, Sch 2 art 8. Delegates are to be appointed from amongst the protecting power's own nationals or the nationals of other neutral powers: Sch 1 art 8, Sch 2 art 8. As to the meaning of 'protecting power' see also PARA 437 post.

3 See *ibid* Sch 1 art 10, Sch 2 art 10.

4 See *ibid* Sch 1 art 10, Sch 2 art 10. The provisions of the conventions constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organisation may, subject to the consent of the parties to the conflict, undertake for the protection and relief of the wounded, sick and shipwrecked, and medical personnel and chaplains: Sch 1 art 9, Sch 2 art 9. See also Protocol I art 5, which deals with the methods by which a protecting power or substitute (such as the International Committee of the Red Cross) may be appointed. Protocol I is set out in the Geneva Conventions Act 1957 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). For these purposes, 'substitute' means an organisation acting in place of a protecting power in accordance with the Geneva Conventions Act 1957 Sch 5 art 5 (as added): Sch 5 art 2(d) (as so added). As to the application and implementation of Protocol I see PARAS 421-422 ante. As to the detaining power see PARA 439 post.

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431. Medical units and transports.

Medical units¹, medical transport² and hospital ships³ are in no circumstances⁴ to be attacked but must be respected and protected at all times⁵. Hospital ships are subject to control and search by the conflicting parties⁶ and must give assistance without distinction of nationality⁷. Medical personnel and chaplains⁸ are to be respected and protected⁹, and, if captured, are to be retained only if the medical or spiritual needs of the prisoners of war so require¹⁰.

1 See the Geneva Conventions Act 1957 s 7(1), Sch 1 art 19. As to medical units, including civilian medical units, see also Sch 5 arts 12-14 (Sch 5 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). For these purposes, 'medical units' means establishments and other units, whether military or civilian, organised for medical purposes, namely the search for, collection, transportation, diagnosis or treatment (including first-aid treatment) of the wounded, sick and shipwrecked, or for the prevention of disease; and medical units may be fixed or mobile, permanent or temporary: see the Geneva Conventions Act 1957 Sch 5 art 8(e), (k) (as so added). Schedule 5 (as added) sets out Protocol I. As to the application and implementation of Protocol I see PARAS 421-422 ante.

As to hospital zones see the Geneva Conventions Act 1957 Sch 1 art 23. As to material and property of medical units, medical establishments and aid societies see Sch 1 arts 33, 34.

2 For the purposes of *ibid* Sch 5 (as added), 'medical transportation' means the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies protected by the conventions and Protocol I (Geneva Conventions Act 1957 Sch 5 art 8(f) (as added: see note 1 supra)); and 'medical transports' means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a party to the conflict (see Sch 5 art 8(g), (k) (as so added)). 'Medical vehicles' means any medical transports by land (Sch 5 art 8(h) (as so added)); and 'medical aircraft' means any medical transports by air (Sch 5 art 8(j) (as so added)). As to medical vehicles see also Sch 5 art 21 (as so added).

Medical aircraft must not be attacked while flying at agreed heights and times and on agreed routes; they must be clearly marked with the distinctive emblem (see PARA 432 post) and obey every summons to land: Sch 1 art 36, Sch 2 art 39. Subject to any conditions or restrictions imposed by those powers, medical aircraft may fly over and, in case of necessity, land on the territory of neutral powers: Sch 1 art 37, Sch 2 art 40. As to medical aircraft see also Sch 5 arts 24-31 (as so added).

As to ships chartered to transport medical equipment see Sch 2 art 38.

3 See *ibid* Sch 1 art 20, Sch 2 arts 22-35. Small craft employed for coastal rescue operations are also to be respected and protected (Sch 2 art 27); so too are sick-bays, if fighting occurs on board a warship (Sch 2 art 28). Merchant vessels which have been transformed into hospital ships cannot be put to any other use during hostilities: Sch 2 art 33. See also Sch 5 arts 22-23 (as added: see note 1 supra). For the purposes of Sch 5 (as added), 'medical ships and craft' means any medical transports by water: Sch 5 art 8(i) (as so added).

4 Protection may, however, cease if they are used to commit, outside their humanitarian duties, acts harmful to the enemy: *ibid* Sch 1 art 21, Sch 2 art 34. Protection may not cease unless warning has been given and remains unheeded after a reasonable time-limit: see Sch 1 art 21, Sch 2 art 34. Certain conditions (eg the fact that they may be armed) are not to be considered as depriving them of protection: Sch 1 art 22, Sch 2 art 35. For an instance in which a hospital ship was held to be deprived of protection by being used as a signalling ship for military purposes see *The Ophelia* [1916] 2 AC 206, PC.

5 See the Geneva Conventions Act 1957 Sch 1 arts 19, 20, 35, Sch 2 arts 22-26.

6 *Ibid* Sch 2 art 31. A hospital ship in a port which falls to the enemy is to be authorised to leave the port: Sch 2 art 29. As to the surrendering of the wounded, sick or shipwrecked on board hospital ships see Sch 2 art 14.

7 *Ibid* Sch 2 art 30.

8 These include the staff of national Red Cross and other voluntary aid societies (*ibid* Sch 1 art 26) and the religious, medical and hospital personnel of hospital ships and their crews (Sch 2 art 36). Members of the armed forces specially trained as hospital orderlies, nurses or auxiliary stretcher-bearers, if carrying out those duties when they fall into enemy hands, are also protected, though they become prisoners of war: Sch 1 arts 25, 29. As to prisoners of war generally see PARAS 433-444 post.

As to protection of civilian medical personnel see also Sch 5 art 15 paras 1-4 (as added: see note 1 *supra*). For the purposes of Sch 5 (as added), 'medical personnel' (who may be permanent or temporary) means those persons assigned, by a party to the conflict, exclusively to the medical purposes enumerated in the definition of 'medical units' (see note 1 *supra*) or to the administration of medical units or to the operation or administration of medical transports: Sch 5 art 8(c), (k) (as so added).

As to the protection of civilian religious personnel see Sch 5 art 15 para 5 (as so added). For the purposes of Sch 5 (as added), 'religious personnel' (who may be permanent or temporary) means military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached: (1) to the armed forces of a party to the conflict; (2) to medical units or medical transports of a party to the conflict; (3) to medical units or medical transports (other than hospital ships); or (4) to civil defence organisations of a party to the conflict: Sch 5 arts 8(d), (k), 9 para 2 (as so added).

9 *Ibid* Sch 1 arts 24-26, Sch 2 art 36. See also Sch 5 art 16 (as added: see note 1 *supra*).

10 *Ibid* Sch 1 art 28, Sch 2 art 37. Personnel whose retention is not indispensable are to be returned as soon as practicable, and pending return are not to be deemed prisoners of war: Sch 1 art 30, Sch 2 art 37. See also Sch 1 art 31.

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432. The distinctive emblems.

The heraldic emblem of the red cross on a white ground, which is the emblem and distinctive sign of the medical service of armed forces¹, must be displayed on the flags², armlets and all equipment employed in the medical service³, and armlets must be worn on the left arm of medical personnel⁴. Hospital ships⁵ must have all their exterior surfaces white and one or more dark red crosses must be painted on each side of the hull and on horizontal surfaces; a white flag with a red cross must be flown at the mainmast⁶. Subject to specified exceptions⁷, the red cross emblem and the words 'Red Cross' and 'Geneva Cross' must not be employed, either in time of peace or war, except to indicate or to protect medical units and establishments, their personnel and material⁸. Similar restrictions apply to the distinguishing signs used to indicate hospital ships⁹.

It is not lawful for any person, without the authority of the Secretary of State¹⁰, to use for any purpose whatsoever any of the following¹¹:

- 36 (1) a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation Red Cross or Geneva Cross or any design or wording so nearly resembling it as to be capable of being mistaken for, or understood as referring to it¹²;
- 37 (2) a red crescent moon on, and completely surrounded by, a white ground, or the designation Red Crescent or any design or wording so nearly resembling it as to be capable of being mistaken for, or understood as referring to it¹³;
- 38 (3) a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation Red Lion and Sun, in red on, and completely surrounded by, a white ground, or any design or wording so nearly resembling it as to be capable of being mistaken for, or understood as referring to it¹⁴;
- 39 (4) an equilateral blue triangle on, and completely surrounded by, an orange ground (being the international distinctive sign of civil defence) or any design so nearly resembling that sign as to be capable of being mistaken for it¹⁵;
- 40 (5) any of the specified distinctive signals¹⁶ (being the signals of identification for medical units and transports) or any signal so nearly resembling any of those signals as to be capable of being mistaken for one of those signals¹⁷;
- 41 (6) a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem¹⁸.

These provisions extend to the use in or outside the United Kingdom¹⁹ of any such emblem, designation, design, wording, sign or signal on: (a) any British ship; (b) any British-controlled aircraft or hovercraft²⁰.

If any one contravenes these provisions he is guilty of an offence and liable to a penalty²¹. A person guilty of such an offence is liable to forfeit any goods or other article upon or in connection with which the emblem, designation, sign, signal, design or wording was used²².

The Secretary of State may make regulations²³: (i) granting the authority (which may be subject to limitations and conditions) of the Secretary of State²⁴ to persons of any description prescribed in the regulations for the use of any emblem, designation, sign, signal, design or wording²⁵; and (ii) making such provision as he may think appropriate for regulating the use for the purposes of the Geneva Red Cross Conventions, or Protocol I or Protocol II²⁶, of any emblem, designation, sign or signal²⁷.

1 Geneva Conventions Act 1957 s 7(1), Sch 1 art 38. This reversal of the Swiss federal colours is a compliment to Switzerland: Sch 1 art 38. In the case, however, of countries already using those emblems, in place of the red cross, the red crescent or the red lion and sun on a white ground are also recognised: Sch 1 art 38. The latter is no longer used in practice.

2 The distinctive flag must be hoisted only over medical units and establishments entitled to be respected: *ibid* Sch 1 art 42. In certain circumstances it may be accompanied by the national flag of the belligerent or of the neutral power lending medical services: Sch 1 arts 42, 43.

3 *Ibid* Sch 1 art 39, Sch 2 art 41.

4 *Ibid* Sch 1 art 40, Sch 2 art 42. Members of the armed forces specially trained as hospital orderlies, nurses or auxiliary stretcher-bearers must, but only while carrying out medical duties, wear a white armlet bearing the distinctive sign in miniature: Sch 1 art 41.

Each party to the conflict is required to ensure that medical and religious personnel and medical units and transports are identifiable by means of the distinctive emblem and distinctive signals: see Sch 5 art 18, Annex I (Sch 5 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). The Geneva Conventions Act

1957 Sch 5 (as added) sets out Protocol I. As to the application and implementation of Protocol I see PARAS 421-422 ante.

5 This applies also to small craft employed for coastal rescue operations: Geneva Conventions Act 1957 Sch 2 arts 27, 43.

6 Ibid Sch 2 art 43. See also Sch 2 arts 44, 45.

7 Exceptions are made in favour of national Red Cross societies, the international Red Cross organisations and their authorised personnel and ambulances and aid stations used in time of peace for giving free treatment: ibid Sch 1 art 44.

8 Ibid Sch 1 art 44. See also Sch 5 art 38 (as added: see note 4 supra). The use of these emblems by companies, firms or individuals is prohibited by Sch 1 art 53. See also Sch 1 art 54.

It is also prohibited to misuse deliberately in an armed conflict other emblems, eg the emblems of neutral states or adverse parties (see Sch 5 art 39 (as so added)) or the international distinctive sign for civil defence (see Sch 5 art 66 para 8, Annex I (as so added)).

9 Ibid Sch 2 art 44.

10 As to the Secretary of State see PARA 413 note 14 ante.

11 Geneva Conventions Act 1957 s 6(1) (amended by the Geneva Conventions (Amendment) Act 1995 ss 2(2)(a), 5(a)(i)).

12 Geneva Conventions Act 1957 s 6(1)(a), (2)(b).

13 Ibid s 6(1)(b), (2)(b). As to trade marks see s 6(4), (4A) (added by the Geneva Conventions (Amendment) Act 1995 s 2(5)).

14 Geneva Conventions Act 1957 s 6(1)(c), (2)(b). See note 13 supra.

15 Ibid s 6(1)(d), (2)(c) (added by the Geneva Conventions (Amendment) Act 1995 ss 2(2), (3), 5(a)(i)).

16 Ie specified in the Geneva Conventions Act 1957 Sch 5 Annex I Ch III (as added: see note 4 supra).

17 Ibid s 6(1)(e), (2)(d) (added by the Geneva Conventions (Amendment) Act 1995 ss 2(2), (3), 5(a)(i)).

18 Geneva Conventions Act 1957 s 6(2)(a).

19 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

20 Geneva Conventions Act 1957 s 6(6) (amended by the Geneva Conventions (Amendment) Act 1995 s 2(1), (6)). For these purposes, 'British ship' means a British ship within the meaning of the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 230); 'British-controlled aircraft' means a British-controlled aircraft within the meaning of the Civil Aviation Act 1982 s 92 (see AIR LAW vol 2 (2008) PARA 619); and 'British-controlled hovercraft' means a British-controlled hovercraft within the meaning of s 92 as applied to hovercraft by virtue of provision made under the Hovercraft Act 1968: see the Geneva Conventions Act 1957 s 6(6) (as so amended); and the Interpretation Act 1978 s 17(2)(a).

21 Geneva Conventions Act 1957 s 6(3) (amended by the Geneva Conventions (Amendment) Act 1995 s 2(4)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Geneva Conventions Act 1957 s 6(3) (as so amended).

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142; MAGISTRATES vol 29(2) (Reissue) PARA 804. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and MAGISTRATES vol 29(2) (Reissue) PARA 807.

Where an offence under the Geneva Conventions Act 1957 s 6 (as amended) committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly: s 6(5). 'Director', in relation to any body corporate established by or under any enactment for the purpose of

carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body: s 6(5).

Proceedings for an offence under s 6 (as amended) may not be instituted in England or Wales except by or on behalf of the Director of Public Prosecutions: s 6(7) (amended by the Geneva Conventions (Amendment) Act 1995 s 2(7)). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

22 Geneva Conventions Act 1957 s 6(3) (as amended: see note 21 supra).

23 The power to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 6A(3) (s 6A added by the Geneva Conventions (Amendment) Act 1995 s 3).

24 *Ile* for the purposes of the Geneva Conventions Act 1957 s 6(1), (2) (as amended): see the text and notes 10-18 supra.

25 *Ibid* s 6A(1)(a) (as added: see note 23 supra). This is without prejudice to the Secretary of State's power to give his authority under s 6(1) or (2) (as amended) otherwise than by regulations under s 6A (as added): s 6A(2) (as so added).

26 As to the Geneva Red Cross Conventions and Protocols I and II (which are set out in the Schedules to the Geneva Conventions Act 1957) see PARA 421 et seq ante.

27 *Ibid* s 6A(1)(b) (as added: see note 23 supra).

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(iii) Prisoners of War

433. Protected persons.

The persons to whom the provisions of the third Geneva Red Cross Convention¹ apply, known as protected persons under the convention, are as follows:

- 42 (1) prisoners of war, who may be: (a) members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming part of them²; (b) members of other militias and volunteer groups, including organised resistance movements belonging to a party to the conflict and operating inside or outside their own territory, even if this territory is occupied, provided they are commanded by a person responsible for his subordinates, have a fixed distinctive sign recognisable at a distance³, carry arms openly and conduct their operations in accordance with the laws and customs of war⁴; (c) members of regular armed forces professing allegiance to a government or an authority not recognised by the detaining power⁵; (d) certain persons who accompany the armed forces if they have authorisation from these armed forces and are provided with identity cards⁶; (e) members of crews of the merchant marine⁷ and civil aircraft⁸; (f) inhabitants of a non-occupied territory who spontaneously take up arms on the approach of the enemy⁹, provided they carry arms openly and respect the laws and customs of war¹⁰;
- 43 (2) persons¹¹ to be treated as if they were prisoners of war, that is: (a) those who belong or have belonged to the armed forces of a country who are interned by the occupying power¹²; and (b) persons within heads (1)(a) to (f) above who are interned in compliance with the requirements of international law by a neutral or non-belligerent power¹³.

The convention applies to these persons from the time they fall into the power of the enemy and until their final release and repatriation¹⁴.

1 The Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550): see PARA 421 note 4 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 3: see PARA 421 ante. It has been held that it does not protect nationals of the detaining power nor persons who owe a duty of allegiance to that power: *Public Prosecutor v Oie Hee Koi* [1968] AC 829, [1968] 1 All ER 419, PC. The position under international law may no longer be as clear as this, certainly in relation to those of the same nationality as the detaining power: see *The Prosecutor v Dusko Tadic* (15 July 1999, unreported), International Tribunal for the Former Yugoslavia, where the Appeals Chamber stated 'whether a person is a protected person no longer depends upon nationality' (see PARA 160). As to the detaining power see PARA 439 post. See also the Geneva Conventions Act 1957 Sch 5 arts 43-47 (as added); and note 13 infra.

2 Ibid Sch 3 art 4 para A(1). The status of prisoner of war was not granted by the United States authorities detaining persons having British nationality in Guantanamo Bay, Cuba, following the attack on Afghanistan in 2001 since they could not bring themselves within this provision. See *R (on the application of Abassi) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598 at para [107], [2003] 3 LRC 297 at para [107] per Lord Phillips MR (it would not be appropriate 'to order the Secretary of State to make any specific representations to the United States, even in the face of what appears to be a clear breach of a fundamental human right, as it is obvious that this would have an impact on the conduct of foreign policy'). Lord Steyn referred to the situation of the detainees in Guantanamo Bay in 'The Legal Black Hole' (2004) 53 ICLQ 1.

3 A soldier in civilian clothes is not protected: *Osman Bin Haji Mohamed Ali v Public Prosecutor* [1969] 1 AC 430, [1968] 3 All ER 488, PC. Combatants are obliged to distinguish themselves from the civilian population: see the Geneva Conventions Act 1957 Sch 5 art 44 para 3 (Sch 5 added by the Geneva Conventions (Amendment) Act 1957 s 6, Schedule). As to the application and implementation of Protocol I (which is set out in the Geneva Conventions Act 1957 Sch 5 (as added)) see PARAS 421-422 ante.

4 Ibid Sch 3 art 4 para A(2).

5 Ibid Sch 3 art 4 para A(3).

6 Ibid Sch 3 art 4 para A(4). These include civil members of military aircraft crews, war correspondents, supply contractors and members of labour units or services responsible for the welfare of the armed forces: Sch 3 art 4 para A(4). See also Sch 1 art 13(4), Sch 2 art 13(4). The identity cards must conform to a prescribed form: Sch 3 art 4 para A(4), Annex.

7 These include masters, pilots and apprentices: ibid Sch 3 art 4 para A(5).

8 Ibid Sch 3 art 4 para A(5).

9 This is known as 'levée en masse'.

10 Geneva Conventions Act 1957 Sch 3 art 4 para A(6). The categories of persons in head (1) in the text are the same as those protected under Sch 1 art 13 and Sch 2 art 13 (which relate to sick, wounded and shipwrecked members of the armed forces): see PARA 426 ante.

11 These categories of persons are not protected persons under ibid Sch 1 art 13 or Sch 2 art 13: see PARA 426 ante.

12 Ibid Sch 3 art 4 para B(1). The provisions of Sch 3 art 4 in no way affect the status of medical personnel and chaplains as provided for in Sch 3 art 33 (see PARA 440 text and note 16 post): Sch 3 art 4 para C.

13 Ibid Sch 3 art 4 para B(2). For the meaning of 'protected prisoner of war' see PARA 437 note 1 post.

The definitions of 'prisoner of war' and 'combatant' have been extended by Protocol I (which is expressed to be without prejudice to the Geneva Convention relative to the Treatment of Prisoners of War art 4): see the Geneva Conventions Act 1957 Sch 5 art 44 para 6 (as added: see note 3 supra). Any combatant (ie any members of the armed forces of a party to a conflict other than medical personnel and chaplains: see Sch 5 art 43 para 2 (as so added)) who falls into the power of an adverse party is a prisoner of war: Sch 5 art 44 para 1 (as so added). The armed forces of a party to a conflict consist of all organised armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates, even if that party is represented by a government or authority not recognised by an adverse party: see Sch 5 art 43 para 1 (as so added). Schedule 5 art 43 (as added) refers to a 'party to the conflict' since peoples fighting against colonial domination etc (see PARA 422 ante) are parties to the conflict although they may not, under international law, be

a state. A person who takes part in hostilities and falls into the power of an adverse party is presumed to be a prisoner of war and therefore is protected by the Geneva Convention relative to the Treatment of Prisoners of War if he claims, or if he appears to be entitled to, prisoner of war status: see the Geneva Conventions Act 1957 Sch 5 art 45 para 1 (as so added). In such a case, his status is to be determined by a competent tribunal: see the Royal Warrant Governing the Maintenance of Discipline Among Prisoners of War dated 7 August 1958 (amended by the Royal Warrants dated 13 January 1965 and 2 December 1968 Sch 1). The similar, although not identical, provision in the Geneva Conventions Act 1957 Sch 3 art 5 was activated in 1991 (since at that time the United Kingdom had not ratified Protocol I): see Risius 'Prisoners of War in the United Kingdom' in Rowe (ed) *The Gulf War 1990-91 in International and English Law* (1993) ch 14. A person who has taken part in hostilities and is not entitled to prisoner of war status is still entitled to the fundamental guarantees in the Geneva Conventions Act 1957 Sch 5 art 75 (as added): see Sch 5 art 45 para 3 (as so added).

Combatants must distinguish themselves from civilians: see Sch 5 art 44 para 3 (as so added). 'Civilian', for the purposes of Sch 5 (as added), means as any person who does not belong to the categories in head 1(a), (b), (c) or (f) in the text or Sch 5 art 43 (as added): see Sch 5 art 50 (as so added). It is recognised that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, but an armed combatant will retain his status as a combatant provided that, in such situations, he carries his arms openly during each military engagement, and during such time as he is visible to the adversary while he is engaged in a military deployment: see Sch 5 art 44 para 3 (as so added). It is the understanding of the United Kingdom that, in relation to Sch 5 art 44 para 3 (as added), such a situation can exist only in occupied territory or in armed conflicts covered by Sch 5 art 1 para 4 (as added) (see PARA 422 ante); and 'deployment' means any movement towards a place from which an attack is to be launched: Geneva Conventions Act (First Protocol) Order 1998, SI 1998/1754, art 2, Schedule para (g). See further Schedule paras (a)-(p) for the reservations and declarations made by the United Kingdom on ratification of Protocol I. For the meaning of 'United Kingdom' see PARA 402 note 4 ante. As to the prohibition of feigning non-combatant status see the Geneva Conventions Act 1957 Sch 5 art 37 (as so added). Schedule 5 art 44 (as added) is not intended to change the practice of states regarding the wearing of uniforms by combatants assigned to regular uniformed armed units of a party to a conflict: see Sch 5 art 44 para 7 (as so added).

A combatant who fails to comply with the minimum requirement in Sch 5 art 44 para 3 (as added) will forfeit his right to be treated as a prisoner of war, but is to be given, nevertheless, protections equivalent in all respects to those accorded to prisoners of war in the Geneva Convention relative to the Treatment of Prisoners of War and Protocol I: see the Geneva Conventions Act 1957 Sch 5 art 44 paras 2, 4 (as so added). He will not, however, be immune from national law in respect of his acts committed, even though they may otherwise be consistent with the laws of war.

A member of the armed forces of a party to an armed conflict who falls into the power of an adverse party while engaging in espionage will forfeit his right to be treated as a prisoner of war and may be treated as a spy: see Sch 5 art 46 (as so added); and the Hague Regulations 1907 regs 29, 30. As to the Hague Regulations 1907 see PARA 418 note 6 ante. Quære whether a non-British citizen could be tried by a court established under the law of the United Kingdom for espionage committed against British forces abroad.

A mercenary has neither the right to be a combatant nor a prisoner of war: see the Geneva Conventions Act 1957 Sch 5 art 47 (as so added). However, both spies and mercenaries are still entitled to the fundamental guarantees: see Sch 5 art 75 (as so added). As to the meaning of 'mercenary' for these purposes see Sch 5 art 47 para 2 (as so added).

14 See *ibid* Sch 3 art 5.

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434. General protection.

Prisoners of war must at all times be treated humanely, and must not be subjected to unlawful acts causing death or seriously endangering health, in particular mutilation or medical or scientific experiments¹. They must be protected against acts of violence or intimidation or insults and public curiosity². Reprisals against prisoners of war are prohibited³. They are entitled to respect for their persons and honour⁴. All prisoners of war must be treated generally alike without adverse distinction founded on race, nationality, religious belief or political opinions, or other similar criteria⁵.

1 Geneva Conventions Act 1957 s 7(1), Sch 3 art 13. The detaining power is bound to provide for the medical attention of prisoners of war: see Sch 3 art 15. As to the detaining power see PARA 439 post.

2 Ibid Sch 3 art 13.

3 Ibid Sch 3 art 13.

4 Ibid Sch 3 art 14. Women are entitled to be treated as favourably as men, with due regard for their sex: Sch 3 art 14. Specific provisions are made in relation to the treatment of women: see Sch 3 arts 25, 29, 49, 88, 97, 108.

5 Ibid Sch 3 art 16. This is subject to any privileged treatment which may be given due to the prisoner's state of health, age or professional qualification: see Sch 3 art 16. The provisions of the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 4 ante) relating to rank (see eg para 440 note 17 post) and sex (see note 4 supra) must be taken into consideration: Geneva Conventions Act 1957 Sch 3 art 16. The convention is set out in the Geneva Conventions Act 1957 Sch 3. See PARA 421 ante.

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435. Variation of rights.

The parties to the Convention relative to the Treatment of Prisoners of War¹ may conclude special agreements on particular matters, but these may not adversely affect the situation of protected persons, medical personnel or chaplains, nor restrict the rights conferred on them by the convention². Protected persons may in no circumstances renounce in part or in whole the rights secured to them under the convention or under any such special agreements that may have been made³.

1 Ie the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 4 ante). The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 3. See PARA 421 ante.

2 Ibid Sch 3 art 6. The protecting power may assist in settling disagreements between conflicting parties as to the interpretation of the convention: Sch 3 art 11. As to the meaning of 'protecting power' see PARA 437 ante.

3 Ibid Sch 3 art 7. As to the categories of protected persons see PARA 433 ante.

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436. Information as to prisoners of war.

On the outbreak of conflict and in all cases of occupation of territory each party to the convention¹ which is a party to the conflict must institute an official information bureau for prisoners of war who are within its power², and a central prisoners of war information agency must be created in a neutral country³.

1 le the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 4 ante). The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 3: see PARA 421 ante.

2 See *ibid* Sch 3 arts 122, 124, where further obligations and rights as to the bureau are set out.

3 See *ibid* Sch 3 arts 123, 124, where the functions and rights of the agency are set out.

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437. The protecting power.

In relation to a protected prisoner of war or protected internee¹, the protecting power is the power or organisation which is carrying out, in the interests of the power of which the protected person is a national, or of whose forces he is or was at any material time a member, the duties assigned to protecting powers under the Convention relative to the Treatment of Prisoners of War or the Convention relative to the Protection of Civilian Persons in Time of War or Protocol I². The Convention relative to the Protection of Civilian Persons in Time of War must be applied with the co-operation and under the scrutiny of the protecting powers whose duty it is to safeguard the interests of the parties to the conflict and the protecting powers may appoint delegates for this purpose³. The high contracting parties may at any time agree to entrust the duties of the protecting powers to an impartial organisation⁴. If protection cannot be arranged, the detaining power must request or accept the offer of the services of a humanitarian organisation, such as the International Committee of the Red Cross, to assume the humanitarian functions of the protecting power⁵.

The representatives or delegates of the protecting powers have permission to go to all places where prisoners of war may be⁶. They have full liberty to select the places they wish to visit, and the duration and frequency of such visits must not be limited⁷. Visits may only be prohibited exceptionally and temporarily for reasons of imperative military necessity⁸.

1 'Protected prisoner of war' means a person protected by the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 4 ante) (which is set out in the Geneva Conventions Act 1957 s 7(1), Sch 3) including a person protected as a prisoner of war under Protocol I (which is set out in the Geneva Conventions Act 1957 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule)) or a person entitled under Protocol I to the same protection as a prisoner of war (see PARA 433 ante): Geneva Conventions Act 1957 s 7(1) (amended by the Geneva Conventions (Amendment) Act 1995 s 4(1), (3)). 'Protected internee' means a person protected by the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550) (see PARA 421 note 5 ante) (which is set out in the Geneva Conventions Act 1957 Sch 4) including a person so protected by virtue of Protocol I, and who is interned in the United Kingdom (see PARA 445 post): Geneva Conventions Act 1957 s 7(1) (amended by the Geneva Conventions (Amendment) Act 1995 s 4(1), (2)). This ensures that the terms 'protected prisoner of war' and 'protected internee' are extended so as to cover persons of such a category protected also by Protocol I. As to the categories of protected persons see PARA 433 ante. As to the application and implementation of Protocol I see PARAS 421-422 ante. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

For the purposes of Protocol I, 'protecting power' means a neutral or other state not a party to the conflict which has been designated by a party to the conflict and accepted by the adverse party and has agreed to carry out the functions assigned to a protecting power under the Geneva Red Cross Conventions and Protocol I: Geneva Conventions Act 1957 Sch 5 art 2(c) (as so added). As to the Geneva Red Cross Conventions (which are set out in the Geneva Conventions Act 1957 Schs 1-4) see PARA 421 et seq ante.

In the extension of the Geneva Conventions Act 1957 to a territory etc by the orders cited in PARA 421 note 7 ante, a reference to the territory etc is to be substituted for 'United Kingdom': see the Geneva Conventions Act (Colonial Territories) Order in Council 1959, SI 1959/1301, art 2, Sch 2 para 1; the Geneva Conventions Act (Guernsey) Order 1966, SI 1966/948, art 1, Schedule para 1; the Geneva Conventions Act (Jersey) Order 1966,

SI 1966/949, art 1, Schedule para 1; and the Geneva Conventions Act (Isle of Man) Order 1970, SI 1970/1677, art 2, Schedule para 1.

2 Geneva Conventions Act 1957 s 7(1) (amended by the Geneva Conventions (Amendment) Act 1995 s 4(1), (5)). During the Falklands War 1982 neither the United Kingdom nor Argentina formally appointed protecting powers under the Geneva Red Cross Conventions. Such an appointment rarely occurs in modern armed conflicts, although the United Kingdom asked Switzerland to represent it and Argentina requested similar assistance from Brazil. It is usually the International Committee of the Red Cross which performs many of the functions of a protecting power: see Junod 'Protection of the Victims of Armed Conflicts--Falkland-Malvinas Islands (1982)' Int Comm Red Cross (1984) p 20.

3 Geneva Conventions Act 1957 Sch 3 art 8. Delegates are to be appointed from amongst the protecting power's own nationals or the nationals of other neutral powers: Sch 3 art 8.

4 See *ibid* Sch 3 art 10. See note 2 *supra*.

5 *Ibid* Sch 3 art 10. The provisions of the convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross may, subject to the consent of the parties to the conflict, undertake for the protection of prisoners of war and for their relief: Sch 3 art 9. As to the methods by which a protecting power or substitute (such as the International Committee of the Red Cross) may be appointed see also Sch 5 art 5 (as added: see note 1 *supra*). For the meaning of 'substitute' for the purposes of Sch 5 (as added) see PARA 430 note 4 *ante*. As to the detaining power see PARA 439 *post*.

6 *Ibid* Sch 3 art 126.

7 *Ibid* Sch 3 art 126.

8 *Ibid* Sch 3 art 126.

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438. International Committee of the Red Cross.

Delegates of the International Committee of the Red Cross have the same prerogatives, in respect of visits to places where protected persons may be, as representatives and delegates of the protecting power¹. Necessary facilities must be afforded to representatives of religious organisations and relief societies for visiting prisoners and distributing relief supplies and material intended for religious, educational or recreational purposes².

1 Geneva Conventions Act 1957 s 7(1), Sch 3 art 126. As to the protecting power and the right of its representatives to make visits see Sch 3 para 126; and PARA 437 *ante*. As to the categories of protected persons see PARA 433 *ante*.

2 *Ibid* Sch 3 art 125. This right is subject to the detaining power's essential security measures: Sch 3 art 125. In practice this is more significant than the powers of a protecting power, since a protecting power is rarely appointed in modern armed conflicts: see PARA 437 note 2 *ante*. As to the detaining power see PARA 439 *post*.

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439. The detaining power.

Prisoners of war are in the hands of the enemy state or 'detaining power', and not of the individuals or military units who have captured them¹. The detaining power is responsible for their treatment, irrespective of the responsibilities of individuals for breaches of the Convention relative to the Treatment of Prisoners of War². The detaining power may only transfer prisoners of war to a state which is a party to the convention and after it has satisfied itself of the willingness and ability of that state to apply the convention³. In such circumstances, responsibility for the application of the convention lies with the power to which they are transferred while they are in its custody⁴.

When prisoners of war do not benefit from the activities of the protecting power⁵, or of an organisation entrusted with the duties incumbent on the protecting power, the detaining power must request a neutral state, or an organisation which offers all guarantees of impartiality and efficacy, to undertake the protecting power's functions⁶. If such protection cannot be arranged, the detaining power must request or accept the offer of services of a humanitarian organisation, such as the International Committee of the Red Cross⁷.

1 Geneva Conventions Act 1957 s 7(1), Sch 3 art 12.

2 Ibid Sch 3 art 12. The Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 4 ante) is set out in the Geneva Conventions Act 1957 Sch 3: see PARA 421 ante.

3 Ibid Sch 3 art 12. The practice of transferring prisoners of war to another High Contracting Party was common during the Gulf War in 1991.

4 Ibid Sch 3 art 12. If the power to which they are transferred fails to carry out the provisions of the Geneva Convention relative to the Treatment of Prisoners of War, the transferring power must take effective measures to correct the situation or request the return of the prisoners of war: Geneva Conventions Act 1957 Sch 3 art 12.

5 For the meaning of 'protecting power' see PARA 437 ante.

6 See the Geneva Conventions Act 1957 Sch 3 art 10; and PARA 437 ante.

7 Ibid Sch 3 art 10. See also Sch 5 art 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). See further PARAS 421-422 ante.

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440. Captivity.

The text of the Geneva Convention relative to the Treatment of Prisoners of War¹ and its annexes and the contents of any special agreement must be posted in the prisoners' own language at places where all may read them².

When questioned, a prisoner of war is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or equivalent information, and no form of coercion may be inflicted to secure information of any kind³.

Prisoners of war may retain effects and articles of personal use⁴, and must be moved humanely to camps out of danger as soon as possible⁵. They may be interned and released on parole or promise⁶. Internment must be on land in places affording every guarantee of hygiene and healthfulness, away from the fire of the combat zone⁷. Quarters must be as favourable as those of the forces of the detaining power⁸, and rations⁹ and clothing must be sufficient¹⁰. All sanitary measures must be taken which are necessary to ensure the cleanliness and healthfulness of

camps and to prevent epidemics¹¹. Each camp must have an infirmary¹², and there must be monthly medical inspections¹³. Prisoners of war are entitled to complete latitude in the exercise of their religious duties¹⁴; and intellectual, educational and recreational pursuits, and sports and games, must be encouraged¹⁵. Medical personnel and chaplains retained to assist prisoners of war are not considered as prisoners of war while retained, but are entitled to at least as favourable treatment as prisoners of war¹⁶.

The detaining power is entitled to utilise the labour of prisoners of war who are physically fit¹⁷, but they may only be compelled to do work of particular classes¹⁸; and fair working pay must be paid¹⁹. Money taken from prisoners of war on capture must be placed to their separate accounts²⁰, and monthly advances of pay must be made²¹.

The sending and receiving of letters, and the receiving of parcels, by prisoners of war must be allowed²², and facilities for the execution and transmission of documents, especially for powers of attorney or wills, must be provided²³. Relief shipments for prisoners of war are exempt from import, customs and other dues²⁴.

Every prisoner of war camp must be put under the immediate authority of a responsible commissioned officer belonging to the regular armed force of the detaining power²⁵.

1 I.e. the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550): see PARA 421 note 4 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 3: see PARA 421 ante.

2 Ibid Sch 3 art 41. Immediately upon prisoners of war falling into its power, the detaining power must inform them and the powers on which they depend, through the protecting power (see PARA 437 ante), of the measures taken to carry out the provisions of the convention: Sch 3 art 69. As to special agreements see PARA 435 ante. As to the detaining power see PARA 439 ante.

3 Ibid Sch 3 art 17.

4 Ibid Sch 3 art 18.

5 Ibid Sch 3 arts 19, 20. Wounded or sick may be kept back temporarily, if they would run greater risks by being moved: Sch 3 art 19.

6 Ibid Sch 3 art 21. Treatment should be with due regard to rank and age: Sch 3 arts 43, 44, 45.

7 Ibid Sch 3 arts 22, 23. As to transit camps see Sch 3 art 24; and as to transfer between camps see Sch 3 arts 46-48.

8 See ibid Sch 3 art 25.

9 See ibid Sch 3 art 26. There must be canteens in all camps: Sch 3 art 28.

10 See ibid Sch 3 art 27.

11 See ibid Sch 3 art 29. Prisoners of war having medical qualifications, though not attached to the forces' medical service, may be required by a detaining power to exercise their medical functions, and will then be exempted from other labour: Sch 3 art 32.

12 See ibid Sch 3 art 30.

13 Ibid Sch 3 art 31. As to medical examination for fitness to work see Sch 3 art 55.

14 Ibid Sch 3 art 34. If there is no retained chaplain or prisoner of war minister, a minister or qualified layman must be appointed if the prisoners so request: Sch 3 art 37.

15 Ibid Sch 3 art 38.

16 Ibid Sch 3 art 33. They are to continue to exercise their medical and spiritual functions: Sch 3 art 33. See further Sch 3 arts 35, 36.

17 Ibid Sch 3 art 49. Age, sex, rank and physical aptitude must be taken into account: Sch 3 art 49. Non-commissioned officers may only be required to do supervisory work; officers in no circumstances may be compelled to work: Sch 3 art 49. Working conditions must be suitable, and national safety regulations applied: Sch 3 art 51. As to the organisation and administration of labour detachments see Sch 3 art 56.

18 In addition to camp administration, installation or maintenance, the classes of work are: (1) agriculture; (2) industries connected with the production or extraction of raw materials, manufacturing industries (with the exception of metallurgical, machinery and chemical industries), public works and building operations which have no military character or purpose; (3) transport and handling of stores which are not military in character or purpose; (4) commercial business and arts and crafts; (5) domestic service; and (6) public utility services having no military character or purpose: ibid Sch 3 art 50.

19 Ibid Sch 3 arts 54, 61, 62. The duration of daily labour, including the time of any journey, must not be excessive or exceed that permitted for civilian workers in the district: Sch 3 art 53. Prisoners of war may not be assigned labour of an unhealthy, dangerous or humiliating nature: Sch 3 art 52. Prisoners of war who are injured as a consequence of their work must receive all necessary care: Sch 3 art 54. As to compensation claims for injury see Sch 3 art 68. As to the treatment of prisoners of war working for private persons see Sch 3 art 57.

20 Ibid Sch 3 art 59. A detaining power may determine on the outbreak of hostilities the maximum amount of cash a prisoner of war may have in his possession: Sch 3 art 58. As to the obligations as to accounting see Sch 3 arts 64-66.

21 Ibid Sch 3 arts 60, 67. Prisoners of war are entitled to receive remittances of money: Sch 3 art 63.

22 Ibid Sch 3 arts 71, 72. The number may normally be limited to not less than two letters and four cards sent by each prisoner of war monthly: see Sch 3 art 71. Immediately on capture, or within the week after arrival at camp, and also in case of sickness or transfer, the prisoner of war must be enabled to write direct to his family, and to the central prisoners of war agency (see PARA 436 ante), a card similar to that prescribed by the convention: Sch 3 art 70. Censoring must be done quickly: Sch 3 art 76.

23 Ibid Sch 3 art 77. Should military operations prevent the powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Sch 3 arts 70, 71, 72, 77, alternative arrangements must be made: Sch 3 art 75.

24 Ibid Sch 3 arts 73, 74.

25 Ibid Sch 3 art 39. As to the saluting of officers and the wearing of badges of rank see Sch 3 arts 39, 40.

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441. Complaints and discipline.

Prisoners of war have a right to make known to the military authorities in whose power they are their requests regarding the conditions of captivity to which they are subjected, and they have an unrestricted right to apply through their prisoners' representative¹ or direct to the representative of the protecting power².

A prisoner of war is subject to the laws and regulations in force in the armed forces of the detaining power³, but no punishment⁴ contrary to the Convention relative to the Treatment of Prisoners of War is allowed⁵. No prisoner of war may be punished more than once for the same offence⁶ or may be sentenced to any penalty except those provided in respect of members of the armed forces of the detaining power who have committed the same acts⁷. Repeated escapes or attempts to escape are not to be treated as an aggravating factor in proceedings for an offence committed during an escape or attempt to escape⁸.

No prisoner of war may be tried or sentenced⁹ for an act which is not forbidden by the law of the detaining power or by international law¹⁰. Judicial investigations must be conducted as rapidly as possible so that the trial may take place as soon as possible¹¹. The detaining power must notify the protecting power of a decision to institute proceedings¹². The prisoner of war is

entitled to call witnesses, and to assistance from one of his prisoner comrades, an advocate of his own choice and, if necessary, an interpreter; and representatives of the protecting power may attend the trial, unless it is held in camera in the interests of state security¹³. Judgment must be reported immediately to the protecting power¹⁴, and the prisoner of war must have a right of appeal in the same way as a member of the armed forces of the detaining power¹⁵.

1 In officers' or mixed camps, the senior officer is the representative; in other camps representatives are elected by secret ballot: Geneva Conventions Act 1957 s 7(1), Sch 3 art 79. As to the duties and privileges of the prisoners' representatives see Sch 3 arts 80, 81.

2 Ibid Sch 3 art 78. For the meaning of 'protecting power' see PARA 437 ante.

3 As to the detaining power see PARA 439 ante.

4 The punishments are fines, discontinuance of privileges above the treatment provided by the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 4 ante), fatigue duties up to two hours daily (except for officers), or confinement: Geneva Conventions Act 1957 Sch 3 art 89. The duration of punishment must not exceed 30 days: Sch 3 art 90. While undergoing confinement as a disciplinary punishment, a prisoner of war continues to enjoy the benefits of the convention except in so far as they are necessarily rendered inapplicable by the mere fact of confinement: Geneva Conventions Act 1957 Sch 3 art 98. The convention is set out in the Geneva Conventions Act 1957 Sch 3: see PARA 421 ante.

5 Ibid Sch 3 art 82. Proceedings will be either judicial or disciplinary (Sch 3 art 82); in deciding which to adopt, leniency is to be shown and wherever possible disciplinary rather than judicial proceedings should be taken (Sch 3 art 83). A prisoner must normally be tried only by a military court unless the laws of the detaining state permit the civil courts to try a member of the armed forces (Sch 3 art 84). A prisoner of war retains the benefit of the convention even if convicted for acts committed prior to capture (Sch 3 art 85). Acts which constitute offences against discipline must be investigated immediately (Sch 3 art 96), and a prisoner is not to be kept in confinement pending the hearing unless a member of the armed forces of the detaining power would be so kept if accused of a similar offence, or unless it is essential in the interests of camp discipline (Sch 3 art 95).

6 Ibid Sch 3 art 86.

7 Ibid Sch 3 art 87. The treatment under judicial or disciplinary punishment may not be more severe than that applied to members of the detaining power's own forces of equivalent rank (Sch 3 art 88), and prisoners of war are not to be transferred to prisons for disciplinary punishment (Sch 3 art 97).

8 Ibid Sch 3 art 93. The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, is an extreme measure which must always be preceded by appropriate warnings: Sch 3 art 42. Escaped prisoners, if recaptured in a subsequent operation, are not liable to punishment for escaping (Sch 3 art 91), and if the prisoner is recaptured before completing his escape, he is liable only to disciplinary punishment (Sch 3 art 92). A prisoner of war who is recaptured must be handed over without delay to the competent military authority: Sch 3 art 92. If a prisoner of war is recaptured, the power on which he depends must be notified in accordance with Sch 3 art 122 provided notification of his escape has been made: Sch 3 art 94.

9 A prisoner of war can be sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the detaining power, and the provisions of the convention have been observed: Geneva Conventions Act 1957 Sch 3 art 102. Sentences must be served in the same establishments and under the same conditions as in the case of members of the armed forces of the detaining power, and these conditions must conform to the requirements of health and humanity: Sch 3 art 108. As to death sentences see Sch 3 arts 100, 101.

10 Ibid Sch 3 art 99.

11 Ibid Sch 3 art 103.

12 Ibid Sch 3 art 104.

13 Ibid Sch 3 art 105.

14 Ibid Sch 3 art 107.

15 Ibid Sch 3 art 106.

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442. English law relating to trial.

United Kingdom¹ municipal law includes particular provisions² regarding protected prisoners of war³ and protected internees⁴, and certain of these provisions⁵ also apply to persons brought up for trial for grave breaches of the Geneva Red Cross Conventions of 1949 and Protocol I as set out in the Geneva Conventions Act 1957⁶.

No court before which a protected prisoner of war is brought up for trial for any offence⁷, or a protected internee is brought up for trial for an offence for which he may be sentenced to death or to imprisonment for two years or more, may proceed with the trial until it is proved to the court's satisfaction that a notice⁸ has been served not less than three weeks previously on the protecting power and, if the accused is a protected prisoner of war, on the accused and the prisoners' representative⁹. The notice must contain certain specified particulars, so far as they are known to the prosecutor, of the accused person's name and description, his place of detention, internment or residence, the offence with which he is charged, the court before which the trial is to take place and the time and place appointed for the trial¹⁰.

The court before which a protected prisoner of war¹¹ is brought up for trial for any offence must not proceed with the trial unless the accused is represented¹² by counsel¹³ and it is proved to the court's satisfaction that not less than 14 days have elapsed since instructions for the accused's representation at the trial were first given to the solicitor by whom that counsel was instructed¹⁴.

If the court adjourns the trial to enable the above requirements¹⁵ to be complied with¹⁶, it may remand the accused for the period of the adjournment¹⁷. Where a protected prisoner of war or protected internee is sentenced to death¹⁸ or to imprisonment for a term of two years or more, the time within which he must give notice of appeal or apply for leave to appeal to the Court of Appeal is the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence, to the expiration of 28 days after the receipt by him of a notice¹⁹ that the protecting power has been notified²⁰ of the conviction and sentence²¹. The Secretary of State may direct that any period during which a protected person²² is in custody in connection with an offence for which he is subsequently imprisoned is to be deducted from the term of his imprisonment²³.

1 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

2 See the Geneva Conventions Act 1957 ss 2-5 (ss 4, 5 as amended).

3 For the meaning of 'protected prisoner of war' see PARA 437 note 1 ante.

4 For the meaning of 'protected internee' see PARA 437 note 1 ante.

5 See the Geneva Conventions Act 1957 s 3.

6 As to grave breaches of the Geneva Red Cross Conventions and Protocol I see PARA 424 ante. As to the Geneva Red Cross Conventions (which are set out in the Geneva Conventions Act 1957 Schs 1-4) see PARA 421 et seq ante. As to the application and implementation of Protocol I (which is set out in the Geneva Conventions Act 1957 Sch 5 (as added)) see PARAS 421-422 ante.

7 If it is alleged that a prisoner of war committed a grave breach of the Geneva Conventions 1949 or of Protocol I outside the United Kingdom, he could not be tried under the International Criminal Court Act 2001

since he would not have been a United Kingdom national nor a resident nor a person subject to United Kingdom jurisdiction: International Criminal Court Act 2001 s 51(2)(b).

8 Unless the contrary is shown, a document purporting to be signed on behalf of the protecting power (see PARA 437 ante), or by the prisoners' representative (see note 9 infra), or by the person accused, or purporting to be an acknowledgement of the receipt of such a document by that power, representative or person, is sufficient evidence that the notice required by the Geneva Conventions Act 1957 s 2(1) was served on that power, representative or person on that day: s 2(3).

9 Ibid s 2(1). 'Prisoners' representative' means the person by whom the functions of prisoners' representative within the meaning of s 7(1), Sch 3 art 79 (see PARA 441 ante) were exercisable in relation to that prisoner at the camp or place at which he was last detained as a protected prisoner of war: s 2(4).

10 Ibid s 2(2).

11 The provisions of ibid s 3(1), (3)-(5) also apply to a person brought up for trial for an offence under s 1 (see PARA 424 ante): see s 3(1)(a).

12 If the accused is a protected prisoner of war, in the absence of counsel accepted by him, counsel instructed on behalf of the protecting power is to be regarded as representing him: ibid s 3(2).

13 In relation to proceedings at which a solicitor has a right of audience, references in ibid s 3(1)-(3) to counsel are to be construed, with any necessary modifications, as references to counsel or a solicitor: s 3(4). Any reference to a solicitor is modified to include references to bodies recognised under the Administration of Justice Act 1985 s 9 (as amended): see the Solicitors Incorporated Practices Order 1991, SI 1991/2684, arts 4, 5, Sch 1; and LEGAL PROFESSIONS vol 65 (2008) PARA 687 et seq.

14 Geneva Conventions Act 1957 s 3(1)(b).

15 See the text to notes 11-14 supra.

16 If the court adjourns because the accused is not represented by counsel etc (see note 13 supra) it must direct that a solicitor and counsel (or, if satisfied that the nature of the charge and the interests of justice do not require representation by counsel, a solicitor only) be assigned to watch over the interests of the accused: Geneva Conventions Act 1957 s 3(3), (4). The manner of assignment is to be such as may be prescribed by Order in Council, and any solicitor or counsel so assigned is entitled to such fees and disbursements out of money provided by Parliament as may be prescribed by regulations made by the Secretary of State: s 3(5). At the date at which this volume states the law, no such Order in Council or regulations had been made. As to the Secretary of State see PARA 413 note 14 ante.

17 Ibid ss 2(5), 3(1).

18 Under English law, the death penalty is no longer available for murder: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 90. The death penalty has been abolished in so far as it applied under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957: Human Rights Act 1998 s 21(5). It is not available for grave breaches of the Geneva Red Cross Conventions or Protocol I: see the Geneva Conventions Act 1957 s 1 (as amended); and PARA 424 ante.

19 In the case of a protected prisoner of war, the notice must be given by an officer of Her Majesty's forces, and in the case of a protected internee it must be given by or on behalf of the governor of the prison in which he is confined: see ibid s 4(1) (substituted by the Criminal Appeal Act 1968 s 52(1), Sch 5 Pt I).

20 An obligation to notify the protecting power is imposed in the case of prisoners of war by the Geneva Conventions Act 1957 Sch 3 art 107 (see PARA 441 ante); and in the case of protected internees by Sch 4 arts 74, 126 (see PARAS 461-462 post).

21 Ibid s 4(1) (as substituted: see note 19 supra). This provision applies notwithstanding anything in the enactments relating to those appeals: s 4(1) (as so substituted). As to appeals to the Court of Appeal see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq. The period for applying to the Court of Appeal or to the House of Lords for leave to appeal to the House of Lords is 14 days from when the applicant receives notice that the protecting power has been notified of the decision of the court or the court's refusal of leave, as the case may be: s 4(1A) (added by the Criminal Appeal Act 1968 Sch 5 Pt I). See also the Administration of Justice Act 1960 s 2(1) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1966. In a case in which the Geneva Conventions Act 1957 s 4(1) (as substituted) applies, a reference to the period there mentioned is to be substituted for any reference to the period of 28 days after the date of conviction in the Criminal Appeal Act 1968 s 30(1)(a) (as substituted) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 389), which relates to the revesting and restitution of property on conviction: Geneva Conventions Act 1957 s 4(1) (as so substituted). As to appeals to the Courts-Martial Appeal Court see

the Courts-Martial (Appeals) Act 1968 s 56, Sch 3 (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 532 et seq.

22 le a protected prisoner of war or protected internee.

23 See the Geneva Conventions Act 1957 s 5(1) (s 5(1), (2) amended by the Criminal Justice 2003 s 41, Sch 3 para 39; and the Northern Ireland (Modification of Enactments--No 1) Order 1973, SI 1973/2163). A protected prisoner of war who has been in custody for an offence for not less than three months must be transferred, if the Secretary of State so directs, into military custody: see the Geneva Conventions Act 1957 s 5(2) (as so amended).

UPDATE

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NOTE 13--'Counsel' includes any person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act) (see LEGAL PROFESSIONS vol 65 (2008) PARA 512 NOTE 3); and 'solicitor' includes any person who, for the purposes of that Act, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act) (see LEGAL PROFESSIONS vol 65 (2008) PARA 512 NOTE 4); Geneva Conventions Act 1957 s 3(5) (added by Legal Services Act 2007 Sch 21 para 23).

SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 2, 3 (art 3 amended by SI 2009/500).

NOTE 18--Human Rights Act 1998 s 21(5) repealed: Armed Forces Act 2006 Sch 17.

NOTE 21--Reference to House of Lords is now to Supreme Court: Geneva Conventions Act 1957 s 4(1A) (amended by Constitutional Reform Act 2005 Sch 9 para 9).

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443. Repatriation and release of prisoners of war.

On the outbreak of hostilities, mixed medical commissions are to be appointed to examine sick and wounded prisoners of war with a view to repatriation¹. Subject to the rule that no sick or injured prisoner may be repatriated against his will during hostilities, seriously wounded and seriously sick prisoners of war must be repatriated when fit to travel². Sentence to disciplinary punishment is not a ground for keeping back a prisoner from repatriation³. No repatriated person may be employed on active military service⁴. After the cessation of hostilities prisoners must be repatriated without delay⁵.

States may set up a claims commission to decide on issues of compensation payable to prisoners of war⁶.

1 Geneva Conventions Act 1957 s 7(1), Sch 3 art 112. Certain categories of wounded and sick have the right to present themselves for medical examination: see Sch 3 art 113.

2 Ibid Sch 3 art 109. This requirement extends to prisoners who meet with accidents, not being self-inflicted: Sch 3 art 114. Certain categories of wounded and sick must be repatriated direct, and certain others may be accommodated in a neutral country: Sch 3 art 110. The detaining power, the power on which the prisoners of war depend and the neutral power are to endeavour to conclude agreements for this purpose: Sch 3 art 111.

Costs of transporting prisoners from the frontiers of the detaining power are borne by the power on which the prisoners of war depend: Sch 3 art 116. As to the detaining power see PARA 439 ante.

3 Ibid Sch 3 art 115.

4 Ibid Sch 3 art 117.

5 Ibid Sch 3 art 118. The conditions for repatriation are similar to those for transfer between camps (see Sch 3 arts 46, 47, 48; and PARA 440 ante); Sch 3 art 119. It is now considered to be customary international law that prisoners of war should not be repatriated against their will despite the mandatory form of Sch 3 art 118. For a practical application see Rowe 'Prisoners of War in the Gulf Area' in Rowe (ed) *The Gulf War 1990-91 in International and English Law* (1993) pp 202-204.

6 See eg the *Eritrea/Ethiopia Claims Commission: Partial Award on Prisoners of War (Ethiopia's Claim 4, Eritrea's claim 17)* (2003) 42 ILM 1056, 1083.

The United Kingdom has established an ex gratia compensation scheme to make a single payment of £10,000 to each of the surviving members of the British groups who were held prisoner by the Japanese during the second world war, in recognition of the unique circumstances of their captivity: 356 HC Official Report (6th Series), 7 November 2000, col 159. Nepalese members of the Gurkha rifle brigades held as prisoners of war by the Japanese should not have been excluded from the scheme: *Gurung v Ministry of Defence* [2002] EWHC 2463 (Admin), [2002] All ER (D) 409 (Nov). Nor should only those born in the United Kingdom, or whose parents or grandparents were born in the United Kingdom, be eligible: *R (on the application of Elias) v Secretary of State for Defence* [2005] EWHC 1435 (Admin), [2005] IRLR 788.

UPDATE

443 Repatriation and release of prisoners of war

NOTE 6--*Elias*, cited, affirmed: [2006] EWCA Civ 1293, [2006] 1 WLR 3213. The exclusion of non-British citizens from the scheme does not amount to unlawful discrimination under the Race Relations Act 1976 as it is based on the nationality rather than the race of the applicant, and the Crown defence under s 41(2) applies: *R (on the application of Dost Mohammed) v Secretary of State for Defence* (2007) Times, 9 May, CA.

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444. Death of prisoners of war.

The death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war or any other person, or due to an unknown cause, is to be the subject of an official inquiry by the detaining power¹. Prisoners of war must be honourably buried after death; wills must be transmitted to the protecting power, and death certificates must be forwarded to the prisoners of war information bureau².

1 Geneva Conventions Act 1957 s 7(1), Sch 3 art 121. The statements of witnesses etc must be forwarded to the protecting power, and if the inquiry indicates guilt, the detaining power must take action against those responsible: Sch 3 art 121. As to the meaning of 'protecting power' see PARA 437 ante; and as to the detaining power see PARA 439 ante. See also Junod 'Protection of the Victims of Armed Conflict--Falkland-Malvinas Islands' (1982) Int Comm Red Cross (1984) p 32.

2 Geneva Conventions Act 1957 Sch 3 art 120. A certified copy of a will must also be sent to the central prisoners of war information agency, and the detaining power must establish a grave registration service: Sch 3 art 120. As to the establishment of a central agency and an information bureau see PARA 436 ante.

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(iv) Civilians

A. IN GENERAL

445. Protected persons.

The fourth Geneva Red Cross Convention is the Convention relative to the Protection of Civilian Persons in Time of War¹. The persons protected by this convention are those who at any given moment and in any manner whatsoever find themselves, during a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals².

Nationals of a state which is not bound by the convention are not within its protection; and nationals of a neutral state who find themselves in the territory of a belligerent, as well as nationals of a co-belligerent state, are not protected persons so long as the state whose nationals they are has normal diplomatic relations with the state in whose hands they are³. Persons who are protected under the three conventions dealing with the sick, wounded and shipwrecked, and with prisoners of war⁴, are not protected persons within the meaning of the fourth convention⁵.

1 I.e. the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante. The term 'war' in its title has no legal significance since the convention applies when Sch 4 art 2 applies: see PARA 448 note 2 post.

2 Ibid Sch 4 art 4. The category of protected persons includes persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the parties concerned or under national legislation: Sch 5 art 73 (Sch 5 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). The Geneva Conventions Act 1957 Sch 5 (as added) sets out Protocol I (see PARAS 421-422 ante). See also the Convention relating to the Status of Refugees (28 July 1951; TS 39 (1954); Cmd 9171); and the Protocol relating to the Status of Refugees (31 Jan 1967; TS 15 (1969); Cmnd 3906).

3 Geneva Conventions Act 1957 Sch 4 art 4.

4 I.e. the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 2 ante); the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 3 ante); and the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958); Cmnd 550) (see PARA 421 note 4 ante). These conventions are set out in the Geneva Conventions Act 1957 Schs 1, 2, 3 respectively: see PARA 421 et seq ante. As to the categories of protected persons under these conventions see Sch 1 art 13, Sch 2 art 13, Sch 3 art 4; and PARAS 426, 433 ante.

5 Ibid Sch 4 art 4, Sch 5 art 50 (as added: see note 2 supra).

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446. Persons not entitled to benefit.

Two classes of persons are excluded from the protection of the Convention relative to the Protection of Civilian Persons in Time of War¹: (1) where a party to the conflict is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to its security and within its territory, that person is not entitled to such rights and privileges under the convention as would, if exercised in his favour, be prejudicial to the security of the state; and (2) in occupied territory, where a protected person is detained as a spy or saboteur or as a person under definite suspicion of activity hostile to the security of the occupying power, and if absolute military security so requires, that person may be deemed to have forfeited the right of communication² provided for in the convention³. In either case, however, such persons are to be treated with humanity, and, if tried, must have the benefit of the rights of fair and regular trial⁴. At the earliest possible date such persons must be granted the full rights and privileges of a protected person⁵.

1 Ile the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante. As to the categories of protected persons see PARA 445 ante.

2 As to the right of communication see *ibid* Sch 4 arts 106-116; and PARA 462 post.

3 Ibid Sch 4 art 5. See also Sch 5 art 45 para 3 (Sch 5 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). The Geneva Conventions Act 1957 Sch 5 (as added) sets out 1949 Protocol I (see PARAS 421-422 ante).

4 For the rights of fair trial see the Geneva Conventions Act 1957 Sch 4 arts 71-75; and PARA 461 post. Protocol I provides for certain fundamental guarantees: see the Geneva Conventions Act 1957 Sch 5 art 75 (as added: see note 3 supra).

5 Ibid Sch 4 art 5.

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447. Information as to civilians.

The provisions of the Convention relative to the Protection of Civilian Persons in Time of War¹ are supplementary to the relevant provisions of the Hague Regulations². Upon the outbreak of a conflict and in all cases of occupation of territory, each of the parties to the convention who is a party to the conflict must establish an official information bureau responsible for receiving and transmitting information respecting protected persons in its power³. A central information agency for protected persons, in particular for internees, must be created in a neutral country⁴.

1 Ile the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante.

2 Ibid Sch 4 art 154. The Hague Regulations 1907 (Cd 4175) are annexed to the International Convention concerning the Laws and Customs of War on Land (Hague Convention IV) (The Hague, 18 October 1907; TS 9 (1910); Cd 5030): see PARA 418 note 6 ante. See especially regs 42-56. The regulations provide certain rules for the protection of civilians in territories under belligerent occupation, but do not regulate the treatment of civilians in the domestic territory of an occupied state. As to the Hague Conventions generally see PARA 418 ante.

3 Geneva Conventions Act 1957 Sch 4 art 136. See also Sch 4 arts 137-139, where the functions and duties of the information bureau are set out. As to the categories of protected persons see PARA 445 ante.

4 Ibid Sch 4 art 140. The information bureau and the agency enjoy certain exemptions from customs, postal and telegraph charges: see Sch 4 art 141.

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448. Duration of application of convention.

The provisions of the Convention relative to the Protection of Civilian Persons in Time of War¹ apply from the outset of any conflict² or occupation³. In the territory of parties to the conflict their application ceases on the general close of military operations, and in the case of occupied territory they cease to apply one year after the general close of military operations, apart from some provisions⁴ which continue to apply during the occupation to the extent that the occupying power exercises the functions of government⁵. Protected persons whose release, repatriation or re-establishment takes place after such date must, in the meantime, benefit from the convention⁶.

1 Ibid the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante.

2 'Conflicts' includes all cases of declared war or other armed conflict between two high contracting parties, even if the state of war is not recognised by one of them: see ibid Sch 4 art 2.

3 Ibid Sch 4 art 6. 'Occupation' may be total or partial and includes cases where the occupation meets with no armed resistance: Sch 4 art 2.

4 Ibid the provisions of ibid Sch 4 arts 1-12, 27, 29-34, 47, 49, 51-53, 59, 61-77, 143: Sch 4 art 6. See also PARA 422 note 6 ante.

A state party to Protocol I (which is set out in the Geneva Conventions Act 1957, Sch 5 (as added)) will continue to be bound by the Geneva Conventions 1949 and Protocol I until the termination of the occupation, except for those persons whose final release, repatriation or re-establishment takes place after that time; these persons will continue to benefit from the relevant provisions of the conventions and of Protocol I until their final release, repatriation or re-establishment: Geneva Conventions Act 1957 Sch 5 art 3(b) (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule).

5 Geneva Conventions Act 1957 Sch 4 art 6.

6 Ibid Sch 4 art 6. As to the categories of protected persons see PARA 445 ante.

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449. The protecting powers.

The Convention relative to the Protection of Civilian Persons in Time of War¹ must be applied with the co-operation and under the scrutiny of the protecting powers whose duty it is to safeguard the interests of the parties to the conflict and the protecting powers may appoint delegates for this purpose². The high contracting parties may at any time agree to entrust the duties of the protecting powers to an impartial organisation³. If protection cannot be arranged, the detaining power must request or accept the offer of the services of a humanitarian

organisation, such as the International Committee of the Red Cross, to assume the humanitarian function of the protecting powers⁴.

The representatives or delegates of the protecting powers have permission to go to all places where protected persons⁵ are, and to all places where they may be⁶. They have full liberty to select the places they wish to visit, and the duration and frequency of such visits must not be limited⁷. Visits may only be prohibited exceptionally and temporarily for reasons of imperative military necessity⁸.

1 le the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante.

2 Ibid Sch 4 art 9. As to the meaning of 'protecting power' see PARA 437 ante. The delegates are to be appointed from amongst the protecting power's own nationals or the nationals of other neutral powers: Sch 4 art 9.

3 Ibid Sch 4 art 11.

4 Ibid Sch 4 art 11. The provisions of the convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross may, subject to the consent of the parties to the conflict, undertake for the protection of civilian persons and for their relief: Sch 4 art 10. The convention refers to the 'detaining power' in relation to aliens in the territory of a party to the conflict and internees, and to the 'occupying power' in relation to protected persons in occupied territory. As to the methods by which a protecting power or substitute (such as the International Committee of the Red Cross) may be appointed see Sch 5 art 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). The Geneva Conventions Act 1957 Sch 5 (as added) sets out the provisions of Protocol I (see PARAS 421-422 ante). As to the meaning of 'substitute' see PARA 430 note 4 ante.

5 As to the categories of protected persons see PARA 445 ante.

6 Geneva Conventions Act 1957 Sch 4 art 143.

7 Ibid Sch 4 art 143.

8 Ibid Sch 4 art 143.

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450. Red Cross and relief organisations.

Delegates of the International Committee of the Red Cross have the same prerogatives, in respect of visits to places where protected persons may be, as representatives of the protecting power¹. Necessary facilities must be afforded to representatives of religious organisations and relief societies for visiting protected persons and distributing relief supplies and material intended for religious, educational or recreational purposes².

1 Geneva Conventions Act 1957 s 7(1), Sch 4 art 143. As to the categories of protected persons see PARA 445 ante. As to the meaning of 'protecting power' see PARA 437 ante. See also PARA 449 ante.

2 Ibid Sch 4 art 142. This right is subject to the essential security measures of the detaining power: Sch 4 art 142. As to the detaining power see PARA 449 note 4 ante.

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451. General protection of populations against certain consequences of war.

The provisions of the Convention relative to the Protection of Civilian Persons in Time of War¹ which deal with general protection of populations against certain consequences of war² apply to the whole of the populations of the countries in conflict without any adverse distinction based on race, nationality, religion or political opinion; and these provisions are intended to alleviate the sufferings caused by war³.

To this end, hospital and safety zones may be established for the protection of the wounded, sick and aged, children under 15 years of age⁴, expectant mothers and mothers of children under seven years of age⁵; and neutralised zones⁶ may be established in regions where fighting is taking place for the wounded and sick, and for civilians who take no part in hostilities and perform no work of a military character⁷. Civilian hospitals must in no circumstances be attacked⁸, and hospital staff⁹ and hospital trains¹⁰ must be respected and protected. Free passage is to be allowed to consignments of medical and hospital stores and objects necessary for religious worship if intended only for civilians¹¹. Correspondence of a strictly personal nature between members of families must be allowed¹², and inquiries about relatives by members of families dispersed owing to the war must be facilitated¹³.

1 I.e. the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante.

2 I.e. *ibid* Sch 4 Pt II (arts 13-26). These provisions govern the relations between a state and its own nationals and those of neutral states and co-belligerents in an armed conflict. See also Protocol I Pt IV (arts 48-79), which sets out provisions relating to the general protection of the civilian population against the effects of hostilities: see PARAS 452-453 post. Protocol I is set out in the Geneva Conventions Act 1957 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule): see PARAS 421-422 ante.

3 Geneva Conventions Act 1957 Sch 4 art 13.

4 Measures for the maintenance and education of children who are orphaned or separated from their families must be taken: *ibid* Sch 4 art 24.

5 *Ibid* Sch 4 art 14. The wounded, sick and infirm, and expectant mothers, must be the object of particular protection and respect (Sch 4 art 16); and local agreements for the removal of the wounded, sick, infirm and aged, and children and maternity cases, from besieged or encircled areas should be concluded (Sch 4 art 17).

6 As to the protection of declared non-defended localities, and of agreed demilitarised zones see *ibid* Sch 5 arts 59, 60 (as added: see note 2 supra).

7 *Ibid* Sch 4 art 15.

8 *Ibid* Sch 4 art 18. They may be marked by the distinctive emblem (see PARA 432 ante) if authorised by the state: Sch 4 art 18. The protection of civilian hospitals is not to cease unless they are used, outside their humanitarian duties, to commit acts harmful to the enemy: Sch 4 art 19.

9 *Ibid* Sch 4 art 20.

10 *Ibid* Sch 4 art 21. Protection is also given to convoys of vehicles and vessels on the sea carrying wounded and sick civilians, the infirm and maternity cases (Sch 4 art 21), and to aircraft exclusively employed for the removal of those persons (Sch 4 art 22).

11 *Ibid* Sch 4 art 23. As to relief in favour of the civilian population: see Sch 5 arts 68-71 (as added: see note 2 supra). The parties to an armed conflict may agree to relief actions where the civilian population is not adequately provided with food, medical supplies, clothing, bedding, shelter, other supplies essential to the

survival of the civilian population and objects necessary for religious worship: Sch 5 arts 69, 70 (as so added). The parties to the conflict and all states party to Protocol I must allow and facilitate rapid and unimpeded passage of relief consignments, equipment and personnel: Geneva Conventions Act 1957 Sch 5 art 70 para 2 (as so added).

12 Ibid Sch 4 art 25.

13 Ibid Sch 4 art 26. The reunion of families dispersed as a result of armed conflicts is to be facilitated in every possible way: Sch 5 art 74 (as added: see note 2 supra).

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452. Protection of the civilian population against the effects of hostilities.

In addition to the provisions concerning humanitarian protection contained in the Geneva Convention relative to the Protection of Civilian Persons in Time of War¹ and in other international agreements binding on the high contracting parties, and other rules of international law, Protocol I² provides for the general protection of the civilian population³ against the effects of hostilities⁴. In order to ensure respect for, and protection of, the civilian population and civilian objects, the parties to the conflict must at all times distinguish between the civilian population and combatants⁵ and between civilian objects and military objectives⁶; and are to direct their operations only against military objectives⁷.

The civilian population and individual civilians must enjoy general protection against dangers arising from military operations and must not be made the object of attack⁸. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited⁹, as are indiscriminate attacks¹⁰. Reprisals against the civilian population are prohibited¹¹. Acts of hostility against cultural objects¹² and places of worship which constitute the cultural or spiritual heritage of peoples¹³, objects indispensable to the survival of the civilian population¹⁴, the natural environment¹⁵, and works and installations containing dangerous forces¹⁶ are prohibited. In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects¹⁷. Those who plan or decide upon an attack must take precautionary measures¹⁸.

The parties to the conflict must, to the maximum extent feasible: (1) endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives¹⁹; (2) avoid locating military objectives within or near densely populated areas; (3) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations²⁰.

1 I.e. the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante. As to the provisions concerning humanitarian protection see Sch 4 Pt II (arts 13-26); and PARA 451 ante.

2 Protocol I is set out in the Geneva Conventions Act 1957 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule): see generally paras 421-422 ante.

3 For the meaning of 'civilian' for these purposes see PARA 433 note 13 ante. A civilian is only protected until such time as he takes a direct part in hostilities: Geneva Conventions Act 1957 Sch 5 art 51 para 3 (as added: see note 2 supra).

4 Ibid Sch 5 art 49 para 4 (as added: see note 2 supra).

5 For the meaning of 'combatant' see PARA 433 note 13 ante.

6 All objects other than military objectives are civilian objects: Geneva Conventions Act 1957 Sch 5 art 52 para 1 (as added: see note 2 supra). 'Military objectives' are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage: Sch 5 art 52 para 2 (as so added). A presumption exists that an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or school, is not being used to make an effective contribution to military action: Sch 5 art 52 para 3 (as so added).

7 Ibid Sch 5 art 48 (as added: see note 2 supra). This explains the need for a combatant to distinguish himself from a civilian in the circumstances referred to in Sch 5 art 44 para 3 (as added): see PARA 433 ante.

8 Ibid Sch 5 art 51 paras 1, 2 (as added: see note 2 supra). 'Attacks' means acts of violence against the adversary whether in offence or defence: Sch 5 art 49 para 1 (as so added). Protocol I applies to all attacks in whatever territory conducted, including the national territory of a party to the conflict but under the control of an adverse party: see the Geneva Conventions Act 1957 Sch 5 art 49 paras 2, 3 (as so added).

9 Ibid Sch 5 art 51 para 2 (as added: see note 2 supra).

10 Ibid Sch 5 art 51 para 4 (as added: see note 2 supra). Indiscriminate attacks are attacks which: (1) are not directed at a specific military objective; (2) employ a method or means of combat which cannot be directed at a specific military objective; or (3) employ a method or means of combat the effects of which cannot be limited as required by Protocol I, and consequently are of a nature to strike military objectives and civilians or civilian objects without distinction: Geneva Conventions Act 1957 Sch 5 art 51 para 4 (as so added). It is submitted that head (2) supra could include a missile which is intrinsically inaccurate. In addition, an attack by bombardment by any method which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town or village or other area containing a similar concentration of civilians or civilian objects is an indiscriminate attack: Sch 5 art 51 para 5(a) (as so added). An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination of these, which would be excessive in relation to the concrete and direct military advantage anticipated, is also an indiscriminate attack: Sch 5 art 51 para 5(b) (as so added). This prohibition on causing excessive 'collateral damage' will often govern the choice of other methods or means of warfare. Thus, in the Gulf War 1990-91, laser-guided bombs rather than free-fall bombs dropped by aircraft were employed to attack military objectives. See further Hampson 'Means and Methods of Warfare in the Conflict in the Gulf' in Rowe (ed) *The Gulf War 1990-91 in International and English Law* (1993) ch 5. See also the *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia* (2000) 39 ILM 1257; and the *Fourth Report from the Foreign Affairs Committee, Session 1999-2000, Kosovo, Response of the Secretary of State for Foreign and Commonwealth Affairs* (Cm 4825) (2000) PARAS 26-28.

11 See the Geneva Conventions Act 1957 Sch 5 art 51 para 6 (as added: see note 2 supra). As to the prohibition of other reprisals see Sch 5 art 52 para 1, art 53 para (c), art 54 para 4, art 55 para 2, art 56 para 4 (as so added).

12 See the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954; Misc 6 (1956); Cmd 9837) and its protocols (see PARA 423 note 22 ante). See also the Hague Regulations 1907 (Cd 4175) reg 27. As to the Hague Regulations 1907 see PARA 418 note 6 ante. See also the Geneva Conventions Act 1957 Sch 5 art 53 (as added: see note 2 supra).

13 See ibid Sch 5 art 53 (as added: see note 2 supra). It is submitted that a church would not normally be a military objective unless it was used to make an effective contribution to military action.

14 See ibid Sch 5 art 54 (as added: see note 2 supra). Such objects include foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works: see Sch 5 art 54 para 2 (as so added). Starvation of civilians is specifically prohibited: Sch 5 art 54 para 1 (as so added). As to the exceptions see Sch 5 art 54 paras 3, 5 (as so added).

15 See ibid Sch 5 art 55 (as added: see note 2 supra). It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment: Sch 5 art 35 para 3 (as so added).

16 See ibid Sch 5 art 56 (as added: see note 2 supra). Dangerous forces are dams, dykes and nuclear electrical generating stations: see Sch 5 art 56 (as so added). As to the exceptions see Sch 5 art 56 para 2 (as so added).

17 See ibid Sch 5 art 57 para 1 (as added: see note 2 supra).

18 The precautions are:

- 1 (1) those who plan or decide upon an attack must: (a) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives and that it is not prohibited by the provisions of Protocol I to attack them; (b) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects; (c) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated (Geneva Conventions Act 1957 Sch 5 art 57 para 2(a) (as added: see note 2 supra));
- 2 (2) an attack must be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated (Sch 5 art 57 para 2(b) (as so added));
- 3 (3) effective advance warning must be given of attacks which may affect the civilian population, unless circumstances do not permit (Sch 5 art 57 para 2(c) (as so added)).

See also the Hague Regulations 1907 reg 26.

19 This is without prejudice to the Geneva Conventions Act 1957 Sch 4 art 49: see PARA 457 post.

20 See *ibid* Sch 5 art 58 (as added: see note 2 supra).

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453. Civil defence.

Civil defence is the performance of certain humanitarian tasks intended to protect the civilian¹ population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival². Civilian defence organisations³ and their personnel⁴ must be respected and protected and they are entitled to perform their civil defence tasks except in case of imperative military necessity⁵. Such protection ceases only if the civil defence organisations, their personnel, buildings, shelters and *matériel*⁶ are used to commit, outside their proper tasks, acts harmful to the enemy⁷. In occupied territories, civilian civil defence organisations must receive the facilities necessary for the performance of their tasks from the authorities⁸. Civil defence personnel and property are to be marked with the international distinctive sign of civil defence⁹.

1 For the meaning of 'civilian' see PARA 433 note 13 ante.

2 Geneva Conventions Act 1957 Sch 5 art 61(a) (Sch 5 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). The tasks are: (1) warning; (2) evacuation; (3) management of shelters; (4) management of blackout measures; (5) rescue; (6) medical services, including first aid, and religious assistance; (7) fire-fighting; (8) detection and marking of danger areas; (9) decontamination and similar protective measures; (10) provision of emergency accommodation and supplies; (11) emergency assistance in the restoration and maintenance of order in distressed areas; (12) emergency repair of indispensable public utilities; (13) emergency disposal of the dead; (14) assistance in the preservation of objects essential for survival; (15) complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organisation: Sch 5 art 61(a)(i)-(xv) (as so added).

3 For these purposes, 'civil defence organisations' means those establishments and other units which are organised or authorised by the competent authorities of a party to the conflict to perform any of the tasks

mentioned in note 2 supra and which are assigned and devoted exclusively to such tasks: *ibid* Sch 5 art 61(b) (as added: see note 2 supra).

4 For these purposes, 'personnel' of civil defence organisations means those persons assigned by a party to the conflict exclusively to the performance of the tasks mentioned in note 2 supra, including personnel assigned by the competent authority of that party exclusively to the administration of those organisations: *ibid* Sch 5 art 61(c) (as added: see note 2 supra).

5 *Ibid* Sch 5 art 62 para 1 (as added: see note 2 supra). This provision also applies to civilians who, although not members of civilian civil defence organisations, respond to an appeal from the competent authorities and perform civil defence tasks under their control: Sch 5 art 62 para 2 (as so added). Objects used for civil defence purposes may not be destroyed except by the party to which they belong: Sch 5 art 62 para 3 (as so added).

Schedule 5 arts 62, 63, 65 and 66 (as added) also apply to the civilian civil defence organisations of neutral or other states not parties to the conflict which perform civil defence tasks mentioned in note 2 supra in the territory of a party to the conflict, with the consent and under the control of that party: Sch 5 art 64 para 1 (as so added).

Members of the armed forces and military units assigned to civil defence organisations must also be respected and protected: Sch 5 art 67 para 1 (as so added).

6 For these purposes, '*matériel*' of civil defence organisations means equipment, supplies and transports used by those organisations for the performance of the tasks mentioned in note 2 supra: *ibid* Sch 5 art 61(d) (as added: see note 2 supra).

7 *Ibid* Sch 5 art 65 para 1 (as added: see note 2 supra). Protection will only cease after a warning has been given which has remained unheeded: see Sch 5 art 65 para 1 (as so added). Certain acts are not considered harmful to the enemy: see Sch 5 art 65 paras 2, 3 (as so added).

8 *Ibid* Sch 5 art 63 para 1 (as added: see note 2 supra).

9 See *ibid* Sch 5 art 66, Annex I (as added: see note 2 supra). As to the use and abuse of distinctive emblems and signs see PARA 432 ante.

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B. STATUS AND TREATMENT OF PROTECTED PERSONS

454. In general.

The rights of protected persons¹ include respect for their persons, honour, family rights, religious convictions and practices and their manners and customs²; and freedom to make applications to the protecting powers³, the International Committee of the Red Cross and any organisation that might assist them⁴. Their presence must not be used to render certain points or areas immune from military operation⁵. Physical and moral coercion⁶, pillage and punishment for offences not personally committed are prohibited⁷. The party in whose hands protected persons may be is responsible for their treatment, irrespective of individual responsibility⁸.

1 As to the categories of protected persons under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550) see PARA 445 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 note 5 ante.

2 *Ibid* Sch 4 art 27.

3 As to the meaning of 'protecting power' see PARA 437 ante.

4 Geneva Conventions Act 1957 Sch 4 art 30.

5 *Ibid* Sch 4 art 28.

6 Ibid Sch 4 art 31. Measures of a character which may cause physical suffering or extermination are prohibited: Sch 4 art 32.

7 Ibid Sch 4 art 33. The taking of hostages is specifically prohibited: Sch 4 art 34.

8 Ibid Sch 4 art 29.

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455. Aliens in the territory of a party to the conflict.

Protected persons¹ in the territory of a party to the conflict are entitled to leave². If they remain, they may be compelled to work only to the same extent as that party's own nationals³. They may be interned only if the state's security makes it absolutely necessary⁴. Restrictive measures affecting them are to be cancelled as soon as possible after the close of hostilities⁵. In applying any measures of control, the detaining power must not treat as enemy aliens, on the basis of their de jure nationality of an enemy state, persons who do not, in fact, enjoy the protection of any government⁶. Protected persons must not be transferred to a power which is not a party to the convention⁷.

1 As to the categories of protected persons under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmd 550) see PARA 445 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see generally para 421 note 5 ante.

2 Ibid Sch 4 art 35. This is subject to their departure not being contrary to the interests of the state: Sch 4 art 35. Their departure must be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food: Sch 4 art 36. There is no provision dealing with expulsion of aliens. Protected persons who are confined pending proceedings or who are serving a sentence involving loss of liberty must be treated humanely during their confinement: Sch 4 art 37.

3 Ibid Sch 4 art 40. If as a result of war they have lost gainful employment, they must be given the opportunity to find other paid employment: Sch 4 art 39.

4 See ibid Sch 4 arts 41-43.

5 Ibid Sch 4 art 46.

6 Ibid Sch 4 art 44. See also Sch 5 art 73 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). Apart from certain special measures (see the Geneva Conventions Act 1957 Sch 4 arts 27, 41), the situation of protected persons continues to be regulated, in principle, by the provisions concerning aliens in time of peace: Sch 4 art 38. As to the detaining power see PARA 449 note 4 ante.

7 Ibid Sch 4 art 45. The provisions concerning the transfer of protected persons to other powers are similar to the prisoner of war provisions: see Sch 3 art 12; and PARA 439 ante.

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456. Variation of rights.

The parties to the Convention relative to the Protection of Civilian Persons in Time of War¹ may conclude special agreements on particular matters, but they must not adversely affect the situation of protected persons², medical personnel or chaplains, nor restrict the rights conferred on them by the convention³. Protected persons may in no circumstances renounce in part or in whole the rights secured to them under the convention or under any such special agreements that have been made⁴.

1 The Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante.

2 As to the categories of protected person see PARA 445 ante.

3 Geneva Conventions Act 1957 Sch 4 art 7. The protecting power may assist in settling disagreements between conflicting parties as to the interpretation of the convention: Sch 4 art 12. As to the meaning of 'protecting power' see PARA 437 ante.

4 Ibid Sch 4 art 8.

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457. Persons in occupied territories.

Protected persons¹, other than those who are nationals of the state whose territory is occupied, are entitled to leave². In relation to such persons, deprivation of rights, by changes in the institutions of government of the occupied territory, or by any agreement between the authorities of the territory and the occupying power or by any annexation by the occupying power of the whole or part of the occupied territory, are prohibited³. Also prohibited are forcible transfers⁴ and conscriptions into the occupying power's armed forces⁵. Duties are imposed on the occupying power with respect to institutions for the care and education of children⁶, food and medical supplies⁷, hospitals and public health⁸, relief schemes⁹, relief consignments¹⁰ and civil defence¹¹.

1 As to the categories of protected persons under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550) see PARA 445 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 note 5 ante.

2 Ibid Sch 4 art 48. This is subject to their departure not being contrary to the national interests of the state: see Sch 4 art 5.

3 Ibid Sch 4 art 47.

4 Ibid Sch 4 art 49.

5 Ibid Sch 4 art 51. Measures aimed at creating unemployment in order to induce workers in occupied territory to work for the occupying power are prohibited: Sch 4 art 52.

6 Ibid Sch 4 art 50.

7 Ibid Sch 4 art 55. See also Sch 5 arts 68-71 (Sch 5 added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule). The occupying power is required to ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population and objects necessary for religious worship: Geneva Conventions Act 1957 Sch 5 art 69 (as so added). Schedule 5 (as added) sets out Protocol I: see PARAS 421-422 ante.

- 8 Geneva Conventions Act 1957 Sch 4 art 56. As to the requisitioning of civilian hospitals see Sch 4 art 57.
- 9 Ibid Sch 4 art 59. The national Red Cross and other relief societies must be permitted to continue their humanitarian activities: see Sch 4 art 63.
- 10 Ibid Sch 4 arts 60-62. As to provisions concerned with religious needs see Sch 4 art 58.
- 11 See ibid Sch 5 arts 61-67 (as added); and PARA 453 ante.

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458. Public and private property.

Any destruction by the occupying power of real or personal property belonging individually or collectively to private persons or to the state, or to other public authorities, is prohibited except where such destruction is rendered absolutely necessary by military operations¹.

- 1 Geneva Conventions Act 1957 s 7(1), Sch 4 art 53.

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459. Judges and public officials.

The occupying power must preserve the status of judges and public officials in the occupied territories¹. Sanctions or measures of coercion or discrimination must not be taken against them, if they abstain from fulfilling their functions for conscientious reasons, although the occupying power may remove them from their posts².

- 1 Geneva Conventions Act 1957 s 7(1), Sch 4 art 54.
- 2 Ibid Sch 4 art 54.

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460. Penal laws.

The ordinary penal laws and tribunals of the occupied territory remain in force except where they constitute a threat to the occupying power's security or an obstacle to the application of the Convention relative to the Protection of Civilian Persons in Time of War¹. The occupying power may subject the population to new provisions essential for it to carry out its obligations

under the convention, to maintain orderly government in the territory, and to ensure the security of the occupying forces and the administration². No penal law enacted by the occupying power comes into force until it is published and brought to the notice of the inhabitants of the occupied territory in their own language, and such penal law must not be retroactive in operation³. Offences against this penal law may be tried by non-political military courts sitting in the occupied territory⁴, but such courts may only apply those laws applicable before the offence was committed and which are in accordance with general principles of law; and the penalty must be proportionate to the offence⁵.

1 Geneva Conventions Act 1957 s 7(1), Sch 4 art 64. The convention referred to is the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante.

2 Ibid Sch 4 art 64.

3 Ibid Sch 4 art 65. Protocol I (which is set out in the Geneva Conventions Act 1995 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule) (see PARAS 421-422 ante)) provides for certain fundamental guarantees including a provision which states that no sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting certain generally recognised principles of regular judicial procedure: Sch 5 art 75 (as so added). These include a prohibition of the retroactive operation of penal laws: see Sch 5 art 75 para 4(c) (as so added).

4 Ibid Sch 4 art 66.

5 Ibid Sch 4 art 67. See also Sch 5 art 75 para 4(c) (as added: see note 3 supra).

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461. Trial and punishment of offenders.

The Convention relative to the Protection of Civilian Persons in Time of War¹ regulates the trial and punishment of offenders by the courts of the occupying power. It includes the restriction of the right of an occupying power to try offences committed before the occupation, with the exception of breaches of the laws and customs of war². No sentence may be passed except after a regular trial³. Also regulated are the right to present evidence⁴, to appeal⁵ and, if condemned to death, to petition for pardon or reprieve⁶. Representatives of the protecting power have the right to attend the trial unless the proceedings are to be held in camera⁷. The protecting power must be informed of proceedings involving the death penalty or imprisonment for two years or more⁸. Pre-trial detention is also regulated⁹. Protected persons who have been accused of offences or convicted by the courts in the occupied territory must be handed over at the close of occupation to the liberated territory's authorities¹⁰.

1 ie the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante.

2 Ibid Sch 4 art 70. Protocol I (which is set out in the Geneva Conventions Act 1995 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule) (see PARAS 421-422 ante)) sets out specific provision for the prosecution and trial of persons accused of war crimes or crimes against humanity: see the Geneva Conventions Act 1957 Sch 5 art 75 para 7 (as so added). As to war crimes generally see PARAS 463-467 post.

3 Ibid Sch 4 art 71. See also Sch 5 art 75 para 4 (as added: see note 2 supra), which refers to an 'impartial and regularly constituted court'. Anyone charged with an offence is presumed innocent until proved guilty (Sch 5 art 75 para 4(d) (as so added)) and is entitled to be tried in his presence (Sch 5 art 75 para 4(e) (as so added)). No one may be prosecuted or punished by the same party for an offence in respect of which a final judgment acquitting or convicting that person has been previously pronounced under the same law and judicial procedure: Sch 5 art 75 para 4(h) (as so added). Judgment is to be pronounced publicly: Sch 5 art 75 para 4(i) (as so added).

4 Ibid Sch 4 art 72. No one is to be compelled to testify against himself or to confess his guilt: Sch 5 art 75 para 4(f) (as added: see note 2 supra). Anyone charged with an offence has the right to examine witnesses: Sch 5 art 75 para 4(g) (as so added).

5 Ibid Sch 4 art 73. A convicted person is to be advised of his judicial and other remedies and of the time limits within which they may be exercised: Sch 5 art 75 para 4(j) (as added: see note 2 supra).

6 Ibid Sch 4 art 75. See also Sch 5 art 75 para 4(j) (as added); and note 5 supra.

7 Ibid Sch 4 art 74. As to the meaning of 'protecting power' see PARA 437 ante.

8 Ibid Sch 4 art 74. As to the death penalty under English law see PARA 442 note 18 ante.

9 Ibid Sch 4 art 76. The duration of the period during which a protected person accused of an offence is under arrest or awaiting trial must be deducted from any period of imprisonment awarded: Sch 4 art 69. See also Sch 5 art 75 para 3 (as added: see note 2 supra). The accused must be informed of the particulars of the alleged offence without delay: Sch 5 art 75 para 4(a) (as so added). No one may be convicted of an offence except on the basis of individual penal responsibility: Sch 5 art 75 para 4(b) (as so added). As to the categories of protected persons see PARA 445 ante.

10 Ibid Sch 4 art 77. As to safety measures concerning protected persons see Sch 4 art 78. See also *Ajuri v Israel Defence Force Commander in the West Bank* (2004) 125 ILR 537, Israel SC (a person against whom an assigned residence order is made must actually pose a danger).

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462. Treatment of internees.

Protected persons under the Convention relative to the Protection of Civilian Persons in Time of War¹ are to be interned only if the security of the detaining power makes it absolutely necessary², and internees are to retain their full civil capacity³.

Places of internment must be put under the authority of a responsible officer⁴ and are not to be situated in areas which are unhealthy⁵ or particularly exposed to war dangers⁶, and are to be provided with canteens⁷ and infirmaries⁸. Internees are to be accommodated separately from prisoners of war and other prisoners⁹. Internees are to have at their disposal premises suitable for religious services¹⁰. The detaining power must encourage intellectual, educational and recreational pursuits, and sports and games, amongst internees¹¹. Daily food rations are to be sufficient in quantity, quality and variety, and sufficient clothing is to be provided free of charge for internees unable to procure it¹². At each place of internment an internee committee, chosen by secret ballot, is to represent the internees¹³ and to further their well-being¹⁴. They are to be allowed to send and receive letters¹⁵ and parcels¹⁶ and to receive visitors¹⁷ and, within limits, to manage their property¹⁸. An internee who is a party to court proceedings must not be prejudiced by reason of his internment¹⁹.

In general, the existing laws of the detaining country are to continue to apply to internees²⁰, and acts which are made offences only when committed by internees are to entail disciplinary punishments only²¹. Repeated escapes or attempts to escape are not to be treated as an aggravating factor in proceedings for an offence committed during an escape or attempt to

escape²². Internees must not be transferred to prison to undergo disciplinary punishment there²³.

Transfers of internees are to be effected humanely, generally by rail or other means of transport, and are to be notified in time for the internees to pack their luggage and inform their next of kin²⁴.

Internees who die during internment are to be honourably buried and their graves are to be properly maintained²⁵. A certified copy of the official record of death²⁶ must be transmitted to the protecting power and the central information agency²⁷. An official inquiry must be held into every death or serious injury of an internee caused or suspected to have been caused by any other person, and into every death from an unknown cause²⁸.

An internee must be released as soon as the reasons which necessitated his internment no longer exist²⁹, and all internment must cease as soon as possible after the close of hostilities³⁰. Persons who are arrested, detained or interned for reasons related to the armed conflict enjoy the protection of the fundamental guarantees³¹ until their final release, repatriation or re-establishment, even after the end of the armed conflict³². The detaining authority must, at its own expense, endeavour to ensure the return or repatriation of all internees³³. The wounded, sick and shipwrecked, who are received or interned in the territory of a neutral state or of a state not party to the armed conflict, are to be afforded the same protections under Protocol I as in the territory of a state or a party involved in the armed conflict³⁴.

The right to intern individuals may be granted by the United Nations Security Council when the rights of an occupying state to intern protected persons³⁵ no longer apply³⁶.

1 I.e. the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550): see PARA 421 note 5 ante. The convention is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 421 ante. As to the categories of protected persons see PARA 445 ante.

2 See *ibid* Sch 4 arts 42, 79. Protected persons may, however, be interned for certain offences: see Sch 4 arts 68, 79. Internees are entitled to have their cases reconsidered by a court or administrative board: Sch 4 art 43. See also Sch 4 arts 41, 78. As to the detaining power see PARA 449 note 4 ante.

3 *Ibid* Sch 4 art 80. They must be permitted to retain articles of personal use: Sch 4 art 97. Internees must not be employed as workers unless they so desire (Sch 4 art 95) and all labour detachments remain part of the place of internment (Sch 4 art 96). Medical attention must be provided (Sch 4 art 81) and the internees must, as far as possible, be accommodated according to their nationality, language and customs (Sch 4 art 82).

4 *Ibid* Sch 4 art 99. The disciplinary regime must be consistent with humanitarian principles and must not include regulations imposing on internees any physical exertion dangerous to health or involving physical or moral victimisation: Sch 4 art 100.

5 *Ibid* Sch 4 art 85.

6 *Ibid* Sch 4 art 83. Air raid shelters are to be provided where necessary: Sch 4 art 88.

7 *Ibid* Sch 4 art 87. They are to receive regular allowances sufficient for purchases of tobacco, toilet requisites etc: Sch 4 art 98.

8 *Ibid* Sch 4 art 91. There are to be monthly medical inspections: Sch 4 art 92. Protocol I (which is set out in the Geneva Conventions Act 1995 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule) (see PARAS 421-422 ante)) makes special provision in favour of women and children in relation to the treatment of persons in the power of a party to the conflict: see the Geneva Conventions Act 1957 Sch 5 arts 76-78 (as so added).

9 *Ibid* Sch 4 art 84. Women are to be held in quarters separated from men's quarters (see Sch 5 art 75 para 5 (as added: see note 8 *supra*)); and they are to be the object of special respect and must be protected against rape, forced prostitution and any other form of indecent assault (Sch 5 art 76 para 1 (as so added)). Children too are to be the object of special respect and must be protected against any form of indecent assault (Sch 5 art 77 para 1 (as so added)); and they are to be held in quarters separate from adults (see Sch 5 art 77 para 4 (as so added)). As to the evacuation of children see Sch 5 art 78 (as so added).

- 10 Ibid Sch 4 art 86. Internees are to enjoy complete latitude in the exercise of their religious duties: Sch 4 art 93.
- 11 Ibid Sch 4 art 94.
- 12 Ibid Sch 4 arts 89, 90.
- 13 Ibid Sch 4 art 102. Internees are to have the right to petition the proper authorities with regard to their conditions of internment; they also have the right to apply through the internee committee or, if considered necessary, may apply direct to the representatives of the protecting power: Sch 4 art 101. As to the meaning of 'protecting power' see PARA 437 ante.
- 14 Ibid Sch 4 art 103. Members of internee committees are not to be required to perform any other work if their duties are rendered more difficult as a result: Sch 4 art 104.
- 15 Ibid Sch 4 arts 106, 107. The censoring of correspondence is to be done as quickly as possible: Sch 4 art 112.
- 16 Ibid Sch 4 art 108. All relief shipments for internees are to be exempt from customs and other dues: Sch 4 art 110. As to relief shipments see further Sch 4 arts 109, 111.
- 17 Ibid Sch 4 art 116.
- 18 Ibid Sch 4 art 114. All reasonable facilities are to be provided for the transmission of wills, powers of attorney and other documents: Sch 4 art 113. Wills must be received for safe keeping by the responsible authorities, and in the event of death must be transmitted to the person designated: Sch 4 art 129.
- 19 Ibid Sch 4 art 115. Immediately on interning protected persons, the detaining power must inform them, the power to which they owe allegiance and their protecting power of the measures taken for executing these provisions (ie Sch 4 arts 105-116): Sch 4 art 105.
- 20 Ibid Sch 4 art 117. The courts or authorities must in passing sentence take into account the fact that the defendant is not a national of the detaining power: Sch 4 art 118. Schedule 4 arts 71-76 (see PARA 461 ante) apply by analogy to proceedings against internees in the detaining power's national territory: Sch 4 art 126. As to notice of trial, appeals and reduction from a term of imprisonment because of a period of previous custody see ss 2, 4, 5 (ss 4, 5 as amended); and PARA 442 ante.
- 21 Ibid Sch 4 art 117. Disciplinary punishments are: (1) a fine; (2) discontinuance of privileges granted over and above the treatment provided for by the convention; (3) fatigue duties; and (4) confinement: Sch 4 art 119. The duration of punishment must not exceed 30 days: Sch 4 art 119. Acts which constitute offences against discipline must be investigated immediately: Sch 4 art 122. Disciplinary punishment may be ordered only by the commandant of the place of internment or other responsible officer, and before any punishment is awarded the accused has the right to defend himself: Sch 4 art 123. Internees awarded disciplinary punishment must be allowed to exercise and to stay in the open air at least two hours daily: Sch 4 art 125.
- 22 Ibid Sch 4 arts 120, 121.
- 23 Ibid Sch 4 art 124.
- 24 Ibid Sch 4 arts 127, 128.
- 25 Ibid Sch 4 art 130. See also Sch 5 arts 32, 34 (as added: see note 8 supra).
- 26 Every death is to be certified by a doctor, and a death certificate is to be made out showing the cause of death: ibid Sch 4 art 129.
- 27 Ibid Sch 4 art 129. As to the central information agency see PARA 447 ante.
- 28 Ibid Sch 4 art 131. The evidence of witnesses and a report are to be forwarded to the protecting power; if the inquiry indicates guilt, the detaining power must take action against those responsible: Sch 4 art 131.
- 29 Ibid Sch 4 art 132.
- 30 Ibid Sch 4 art 133.
- 31 Ie ibid Sch 5 art 75.

- 32 Ibid Sch 5 art 75 para 6 (as added: see note 8 supra). See also Sch 5 art 3(b) (as added); and PARA 422 note 6 ante.
- 33 Ibid Sch 4 arts 134, 135.
- 34 See ibid Sch 5 art 19 (as added); and PARA 425 ante.
- 35 Ie under ibid Sch 4.
- 36 See R (on the application of Al-Jedda) v Secretary of State for Defence [2005] EWHC 1809 (Admin).

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(3) WAR CRIMES AND CRIMES AGAINST HUMANITY

463. War crimes under international law.

International law recognises universal jurisdiction in respect of war crimes, which include violations of the laws or customs of war and crimes against humanity¹. This gives all states the right to try alleged war criminals, irrespective of where the offence was committed or the nationality of the perpetrators and victims.

As an alternative to the trial of alleged war criminals by a state, the international community may establish an international court for the trial of such persons. This may be established by treaty² or by the Security Council of the United Nations³. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is a tribunal established by the Security Council of the United Nations in 1993⁴, as are the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda of 1994⁵ and the Special Court for Sierra Leone⁶. Like all members of the United Nations, the United Kingdom has agreed to accept and carry out the decisions of the Security Council⁷. This obligation must be implemented into the law of the United Kingdom to have any effect there⁸. Assistance within the United Kingdom to the tribunals mentioned above, for example, by the arrest and delivery of persons to the respective tribunals, and provision for the discontinuance of proceedings of courts within the United Kingdom, is made possible by statutory instrument⁹. Assistance to the International Criminal Court is provided for by the International Criminal Court Act 2001¹⁰.

1 See *The Trial of German Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg, Germany* (HMSO) (London, 1950); *A-G of the Government of Israel v Eichmann* (1961) 36 ILR 5 (on appeal sub nom *Eichmann v A-G of Israel* (1962) 36 ILR 277). The United Kingdom established military courts for the trial and punishment of violations of the laws and usages of war committed during any war after 2 September 1939 by Royal Warrant, dated 14 June 1945, AO 81/1945. Offenders in territory occupied by British forces in the former German Reich were tried: see Rogers 'War Crimes Trials under the Royal Warrant: British Practice, 1945-1949' (1990) 39 ICLQ 780. For the meaning of 'United Kingdom' see PARA 402 note 4 ante. States may attempt to assert this jurisdiction even although there is no connection between the alleged crime and the state asserting jurisdiction. Such action may lead to legal challenge. See eg *Case Concerning Certain Criminal Proceedings in France (Republic of the Congo v France): Request for the Indication of a Provisional Measure* (2003) 42 ILM 852, ICJ.

2 See the *Agreement by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis* (London, 8 August 1945; Misc 10 (1945); Cmd 6668). See also the Rome Statute

of the International Criminal Court (17.7.98) (UN Doc A/CONF 183/9; 37 ILM 999); the International Criminal Court Act 2001; and EXTRADITION vol 17(2) (Reissue) PARA 1164.

3 See under the Charter of the United Nations Ch VII. As to the United Nations generally see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 519 et seq; and as to the Charter of the United Nations see PARA 401 note 4 ante.

4 See UN Security Council Resolution 808 (22 February 1993); and UN Security Council Resolution 827 (25 May 1993).

5 UN Security Council Resolution 955 (8 November 1994).

6 See UN Security Council Resolution 1315 (14 August 2000).

7 See the Charter of the United Nations art 25.

8 See the United Nations Act 1946 s 1 (as amended); and the International Criminal Court Act 2001 s 77(4). As to the implementation of treaty obligations into the law of the United Kingdom see PARA 417 ante; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 17 et seq.

9 See the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716 (amended by SI 1997/1752; SI 1997/1753; SI 1998/1755; SI 2000/1342; SI 2000/3243; SI 2001/412; SI 2001/2563); and the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296 (amended by SI 1997/1751; SI 1997/1753; SI 1998/1755; SI 2000/1342; SI 2000/3243; SI 2001/412; SI 2001/3920). As to such assistance within Guernsey, the Isle of Man and Jersey see the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order 1997, SI 1997/281; the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, SI 1997/282; and the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997, SI 1997/283.

10 See the International Criminal Court Act 2001 Pts 1-4 (ss 1-49); the International Criminal Court Act 2001 (Enforcement of Fines, Forfeiture and Reparation Orders) Regulations 2001, SI 2001/1379 (amended by SI 2002/822); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 437 et seq.

UPDATE

463 War crimes under international law

NOTE 9--SI 1996/716 further amended: SI 2005/3389, SI 2006/1923. SI 1996/1296 further amended: SI 2005/3389, SI 2006/1923, SI 2009/2054.

NOTE 10--Provision is made for corresponding assistance in relation to the Special Court for Sierra Leone: 1991 Act s 77A (added by the International Tribunals (Sierra Leone) Act 2007 s 1).

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464. Liability for war crimes under English law.

A treaty may require states party to it to implement certain penal provisions contained in it by establishing national jurisdiction over individuals for an alleged breach of those provisions. This is the effect of the four Geneva Red Cross Conventions and their additional Protocol I¹, each of which contains provisions requiring states to enact legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any grave breach of the convention². The conventions set out the acts or omissions which may constitute grave breaches and the Geneva Conventions Act 1957 sets out the penal sanctions for these offences under English law³.

It is an offence against the law of England and Wales for a person to commit genocide, a crime against humanity or a war crime⁴. This applies to acts committed in England or Wales, or outside the United Kingdom by a United Kingdom national, a United Kingdom resident or a person subject to United Kingdom service jurisdiction⁵.

Customary international law, unlike a treaty, is a part of the law of England and Wales without any implementing legislation being required⁶. In theory, a crime recognised under customary international law could be tried in the courts of England and Wales; but whether or not a rule of international law forms part of English law is governed by the principle of certainty, and whether or not it constitutes a crime depends on whether or not a breach of the rule can properly result in penal consequences⁷.

1 As to the Geneva Red Cross Conventions (which are set out in the Geneva Conventions Act 1957 Schs 1-4) see generally para 421 et seq ante. See also Protocol I (which is set out in the Geneva Conventions Act 1957 Sch 5 (added by the Geneva Conventions (Amendment) Act 1995 s 6, Schedule)). As to the application and implementation of Protocol I see PARAS 421-422 ante.

Alternatively, the government of the United Kingdom may consider that to give effect to a treaty which the Crown wishes to ratify it requires some form of implementing legislation: see generally paras 468, 472, 497 post. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

2 See the Geneva Conventions Act 1957 s 7(1), Sch 1 art 49, Sch 2 art 50, Sch 3 art 129, Sch 4 art 146. As to grave breaches and abuse of the conventions see PARA 424 ante.

3 See *ibid* s 1 (as amended); and PARA 424 ante. Section 1 (as amended) illustrates the principle that international law permits states to exercise jurisdiction over alleged war criminals, whatever their nationality or the locus of the crime. The Geneva Red Cross Conventions and Protocol I require states to implement in their national law such wide jurisdiction but this is not the case in relation to the International Criminal Court: see the Rome Statute of the International Criminal Court (17.7.98) (UN Doc A/CONF 183/9; 37 ILM 999), which provides that the court may exercise its jurisdiction if either or both of the state on the territory of which the conduct occurred (or if the crime was committed on board a vessel or aircraft, the state of registration) and the state of which the person accused of the crime is a national are parties to the Statute or have accepted the jurisdiction of the court. A state may go beyond this and implement universal jurisdiction without infringing the principles of international law. An international war crimes tribunal (see PARA 463 ante) may request that a national court should defer to the competence of the international tribunal by discontinuing proceedings to which the request relates: see the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716, art 3; and the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296, art 3. The jurisdiction of the International Criminal Court is, however, complementary to national jurisdiction and it will not have jurisdiction if: (1) the case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable genuinely to carry out the investigation or prosecution; (2) the case has been investigated by a state which has jurisdiction over it and the state has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the state genuinely to prosecute; (3) the person concerned has already been tried for conduct which is the subject of the complaint, and a retrial by the International Criminal Court is not permitted; (4) the case is not of sufficient gravity to justify further action by the International Criminal Court: Rome Statute of the International Criminal Court art 17(1).

4 See the International Criminal Court Act 2001 s 51(1). These offences are defined by reference to the Rome Statute of the International Criminal Court, which in turn refers to grave breaches of the Geneva Red Cross Conventions 1949: see the International Criminal Court Act 2001 s 50(1); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 437, 454. A grave breach of the Geneva Red Cross Conventions 1949 might therefore be charged alternatively as a war crime under the International Criminal Court Act 2001 s 51. See also the International Criminal Court Act 2001 (Reservations and Declarations) Order 2001, SI 2001/2559; and the International Criminal Court Act 2001 (Elements of Crimes) (No 2) Regulations 2004, SI 2004/3239.

5 International Criminal Court Act 2001 s 51(2). See INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 454. As to offences under the International Criminal Court Act 2001 generally see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 437 et seq.

6 See *Trendtex Trading Corp v Central Bank of Nigeria* [1977] QB 529, [1977] 1 All ER 881, CA; *R v Jones* [2004] EWCA Crim 1981, [2005] QB 259, [2004] 4 All ER 955; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 4, 16.

7 *R v Jones* [2004] EWCA Crim 1981 at [24], [2005] QB 259 at [24], [2004] 4 All ER 955 at [24] per Latham LJ. In this case it was decided that the crime of aggression under customary international law, which is undefined in the Rome Statute of the International Criminal Court and the International Criminal Court Act 2001,

could not be translated into domestic law in a way that would entitle domestic courts to impose punishment: see *R v Jones* supra at [43] per Latham LJ. This decision settles the possibility, raised in the Attorney General's Note to the Prime Minister (7 March 2003) (see PARA 401 note 6 ante), that it could be argued that international aggression was a crime recognised by the common law which could be prosecuted in the United Kingdom courts. In this regard, see also *Ayliffe v DPP* [2005] EWHC 684 (Admin), [2005] 3 All ER 330.

UPDATE

464 Liability for war crimes under English law

TEXT AND NOTES 6, 7--International law cannot create a crime triable directly, without the intervention of Parliament, in an English court: *R v Jones*; *Ayliffe v DPP*; *Swain v DPP* [2006] UKHL 16, [2007] 1 AC 136 (affirming *R v Jones*; *Ayliffe v DPP*, both cited). The House of Lords rejected the contention that the crime of aggression had not become a crime under domestic law because of uncertainty of the elements of the crime. Rather it was because it was for Parliament and Parliament alone to decide whether conduct not previously regarded as criminal should be made an offence and because, in the absence of statutory authority, the prosecution of a crime of aggression would be inconsistent with the fundamental principle of the constitution that the principal was always the state itself with the liability of individuals secondary.

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465. War crimes committed between 1 September 1939 and 5 June 1945.

In respect of alleged war crimes committed before the Geneva Conventions Act 1957 came into force, there was no legislation enabling a person to be tried within the United Kingdom, until the passing of the War Crimes Act 1991¹. This Act enables proceedings to be brought in the United Kingdom against a person for murder, manslaughter or culpable homicide, irrespective of his nationality at the time of the alleged offence, provided that the offence: (1) was committed during the period beginning with 1 September 1939 and ending with 5 June 1945 in a place which at the time was part of Germany or under German occupation; and (2) constituted a violation of the laws and customs of war². No such proceedings may be brought against any person unless he was on 8 March 1990, or has subsequently become, a British citizen or resident in the United Kingdom, the Isle of Man or any of the Channel Islands³. No proceedings may be brought in England and Wales without the consent of the Attorney General⁴.

¹ The War Crimes Act 1991 came into force on 9 May 1991. For the meaning of 'United Kingdom' see PARA 402 note 4 ante. For an example of a successful prosecution under the War Crimes Act 1991 see *R v Sawoniuk* [2000] 2 Cr App Rep 220, [2000] All ER (D) 154, CA.

² War Crimes Act 1991 s 1(1). As to the laws and customs of war see PARA 416 ante. See also the Charter of the International Military Tribunal (held at Nuremberg) art 6(b), annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis; and The Manual of Military Law Part III (1958) at para 626.

³ War Crimes Act 1991 s 1(2). As to British citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

⁴ Ibid s 1(3). Proceedings in Northern Ireland require the consent of the Attorney General of Northern Ireland: s 1(3).

Expenses are paid out of money provided by Parliament: see s 2 (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 67).

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466. War crimes committed by members of the armed forces of the Crown.

Members of the Army, the Royal Air Force and the Royal Navy who commit an offence against the criminal law of England and Wales may be dealt with under the respective service discipline Act wherever the offence was committed¹. Thus an individual may be charged before a court-martial convened under the appropriate service discipline Act with an offence, for example, of murder² in killing a prisoner of war or a civilian. In addition, or in the alternative, a member of the armed forces may be charged before a court-martial where the offence is alleged to have been committed abroad, or by a court in the United Kingdom, with a grave breach of the Geneva Red Cross Conventions³ or with an offence under the International Criminal Court Act 2001⁴.

1 See the Army Act 1955 s 70 (as amended); the Air Force Act 1955 s 70 (as amended); the Naval Discipline Act 1957 s 42 (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 392 et seq.

2 If the offence was one of murder committed abroad, the courts in England and Wales would also have jurisdiction. Where the offence charged is one in which the courts in any part of the United Kingdom do not possess jurisdiction, a member of the armed forces may only be tried under the relevant service discipline Act (eg causing grievous bodily harm to a prisoner of war or to a civilian). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

3 As to the Geneva Red Cross Conventions and Protocol I (which are set out in the Geneva Conventions Act 1949 Schs 1-5 (Sch 5 as added)) see PARA 421 et seq ante. As to grave breaches of the conventions see PARA 424 ante.

4 ie under the International Criminal Court Act 2001 ss 51, 52: see PARA 464 ante. The service discipline Acts do not permit a person to be tried by military or naval jurisdiction for a grave breach of the Geneva Conventions Act 1957 or the International Criminal Court Act 2001 ss 51, 52 if the offence was not committed abroad: see the Army Act 1955 s 70(4) (as amended); the Air Force Act 1955 s 70(4) (as amended); the Naval Discipline Act 1957 s 48(2) (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 422.

UPDATE

466 War crimes committed by members of the armed forces of the Crown

NOTES 1, 4--Army Act 1955, Air Force Act 1955, and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

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467. War crimes committed by enemy prisoners of war.

Prisoners of war held by the armed forces of the Crown may be tried by a prisoner of war court-martial convened in any place for an offence of having committed, aided or abetted or

procured the commission by any other person of a grave breach of the Geneva Red Cross Conventions¹. Where the prisoner of war is held in the United Kingdom, the national courts would also have jurisdiction to try a prisoner of war in respect of a grave breach of those conventions².

1 See the Prisoners of War (Discipline) Regulations, Royal Warrant Governing the Maintenance of Discipline Among Prisoners of War (7 August 1958) art 7. As to the Geneva Red Cross Conventions and Protocol I (which are set out in the Geneva Conventions Act 1957 Schs 1-5 (Sch 5 as added)) see PARA 421 et seq ante. As to grave breaches of the conventions see PARA 424 ante. An alleged breach of any other offence against the law of England and Wales can also be tried by such a court: see the Prisoners of War (Discipline) Regulations, Royal Warrant Governing the Maintenance of Discipline Among Prisoners of War (7 August 1958) art 6. Cf the Geneva Conventions Act 1957 Sch 3 art 82 (see PARA 441 ante).

2 See the Geneva Conventions Act 1957 s 1 (as amended); and PARA 424 ante. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

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(4) BIOLOGICAL, CHEMICAL, NUCLEAR AND OTHER WEAPONS AND MINES

(i) Biological Weapons

468. Introduction.

The Biological Weapons Act 1974¹ was enacted in order to comply with the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction².

1 The Biological Weapons Act 1974 extends to Northern Ireland: s 6(1). It has been further extended with such exceptions, adaptations or modifications as specified by Her Majesty by Order in Council (see s 6(2), (3)) to Guernsey (see the Biological Weapons Act 1974 (Guernsey) Order 1974, SI 1974/1110), the Isle of Man (see the Biological Weapons Act 1974 (Isle of Man) Order 1974, SI 1974/1111), Jersey (see the Biological Weapons Act 1974 (Jersey) Order 1974, SI 1974/1112), and certain overseas territories (see the Biological Weapons Act 1974 (Overseas Territories) Order 1975, SI 1975/240).

2 The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (London, Moscow and Washington, 10 April 1972; TS 11 (1976); Cmnd 6397).

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469. Offence relating to biological weapons.

No person may develop, produce, stockpile, acquire or retain any biological agent¹ or toxin² of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes; or any weapon, equipment or means of delivery designed to use biological agents or

toxins for hostile purposes or in armed conflict³. This applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person⁴.

A person may not: (1) transfer any biological agent or toxin to another person or enter into an agreement to do so; or (2) make arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so, if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other peaceful purposes and he knows or has reason to believe that that is the case⁵.

Contravention of these provisions is an offence⁶.

1 'Biological agent' means any microbial or other biological agent: Biological Weapons Act 1974 s 1(2).

2 'Toxin' means any toxin, whatever its origin or method of production: *ibid* s 1(2).

3 *Ibid* s 1(1).

4 *Ibid* s 1A(1) (s 1A added by the Anti-terrorism, Crime and Security Act 2001 s 44). 'United Kingdom person' means a United Kingdom national, a Scottish partnership or a body incorporated under the law of a part of the United Kingdom: Biological Weapons Act 1974 s 1A(4) (as so added). For this purpose, a United Kingdom national is an individual who is: (1) a British citizen, a British overseas territories citizen, a British national (overseas) or a British overseas citizen; (2) a person who under the British Nationality Act 1981 is a British subject; or (3) a British protected person within the meaning of that Act: Biological Weapons Act 1974 s 1A(5) (as so added; and amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to British citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

Proceedings for an offence committed under the Biological Weapons Act 1974 s 1 (as amended) outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom: s 1A(2) (as so added). Her Majesty may by Order in Council extend the application of s 1 (as amended), so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony: s 1A(3) (as so added). Nothing in s 1A (as added and amended) affects any criminal liability arising otherwise than under s 1A (as added and amended): s 1A(6) (as so added).

5 *Ibid* s 1(1A) (added by the Anti-terrorism, Crime and Security Act 2001 s 43).

6 Biological Weapons Act 1974 s 1(3). The penalty on conviction on indictment is life imprisonment: see s 1(3).

In England or Wales, proceedings may not be instituted except by or with the consent of the Attorney General; and, in Northern Ireland, they may not be instituted except by or with the consent of the Attorney General for Northern Ireland: s 2(1). The offence may not be tried by courts-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957: see the Army Act 1955 s 70(4); the Air Force Act 1955 s 70(4); and the Naval Discipline Act 1957 s 48(2) (all amended by the Biological Weapons Act 1974 s 5).

Proceedings for a biological weapons offence may be instituted by the Director of Revenue and Customs Prosecutions or by order of the Commissioners for Her Majesty's Revenue and Customs if it appears to the Director or to the Commissioners that the offence has involved: (1) the development or production outside the United Kingdom of any thing mentioned in the Biological Weapons Act 1974 s 1(1) (see the text to notes 1-3 supra); (2) the movement of any such thing into or out of any country or territory; (3) any proposal or attempt to do anything falling within head (1) or head (2) supra: s 1B(1) (s 1B added by the Anti-terrorism, Crime and Security Act 2001 s 45; and the Biological Weapons Act 1974 s 1B(1), (3), (4) amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 para 17). 'Biological weapons offence' means an offence under the Biological Weapons Act 1974 s 1 (as amended) or the Anti-terrorism, Crime and Security Act 2001 s 50 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 629) (including an offence of aiding, abetting, counselling, procuring or inciting the commission of, or attempting or conspiring to commit, such an offence): Biological Weapons Act 1974 s 1B(2) (as so added). Any proceedings for an offence which are instituted by order of the Commissioners under s 1B(1) (as added) must be commenced in the name of an officer of Revenue and Customs, but may be continued by another officer: s 1B(3) (as so added and amended). Where the Commissioners investigate, or propose to investigate, any matter with a view to determining: (a) whether there are grounds for believing that a biological weapons offence has been committed; or (b) whether a person should be prosecuted for such an offence, that matter is to be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 904): Biological Weapons Act 1974 s 1B(4) (as so added and amended). Nothing in s 1B (as added and amended) otherwise affects any power of any person (including any officer): s 1B(5) (as so added). As to the

Commissioners for Her Majesty's Revenue and Customs and the transfer to those Commissioners of the functions of the former Commissioners of Customs and Excise see PARA 415 note 6 ante.

UPDATE

469 Offence relating to biological weapons

NOTE 6--See further Serious Crime Act 2007 Sch 6 para 2 (references to common law offence of incitement). Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

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470. Offence committed by bodies corporate.

Where an offence¹ which is committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly².

1 Ie an offence under the Biological Weapons Act 1974 s 1 (as amended): see PARA 469 ante.

2 Ibid s 3.

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471. Powers to search and obtain evidence.

If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence¹ has been, or is about to be, committed, he may grant a search warrant² authorising a constable: (1) to enter, at any time within one month from the date of the warrant, any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found there; (2) to inspect any document found in the premises or place or in the possession of any person found there, and to take copies of, or seize or detain any such document; (3) to inspect, seize and detain any equipment so found; and (4) to inspect, sample, seize and detain any substance so found³.

1 Ie an offence under the Biological Weapons Act 1974 s 1 (as amended): see PARA 469 ante.

2 A warrant so issued may also authorise any person named in the warrant to accompany the constable and assist him in taking any of the steps mentioned in heads (1)-(4) in the text: ibid s 4(2).

³ Ibid s 4(1) (amended by the Police and Criminal Evidence Act 1984 s 119(2), Sch 7 Pt I). As from a day to be appointed, the period mentioned in head (1) in the text is three months: see the Biological Weapons Act 1974 s 4(1) (as so amended; and prospectively amended by the Serious Organised Crime and Police Act 2005 s 174(1), Sch 16 para 5). At the date at which this volume states the law no such day had been appointed.

UPDATE

471 Powers to search and obtain evidence

NOTE 4--Day now appointed: SI 2005/3495.

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(ii) Chemical Weapons

472. Introduction.

The Chemical Weapons Act 1996¹ was enacted in order to comply with the Convention on the Prohibition of the Development, Production, Stockpiling and the Use of Chemical Weapons and on their Destruction².

¹ See the Chemical Weapons Act 1996 ss 37, 39(4). The Act came into force on 16 September 1996: s 39(1); Chemical Weapons Act 1996 (Commencement) Order 1996, SI 1996/2054. The Chemical Weapons Act 1996 extends to Northern Ireland (s 39(2)), and may be extended with such exceptions, adaptations or modifications as may be specified by Order in Council to any of the Channel Islands, the Isle of Man or any colony (s 39(3)). In exercise of this power the following orders have been made: the Chemical Weapons Act 1996 (Jersey) Order 1998, SI 1998/2565; the Chemical Weapons Act 1996 (Isle of Man) Order 1998, SI 1998/2794; the Chemical Weapons Act 1996 (Guernsey) Order 2000, SI 2000/743; and the Chemical Weapons (Overseas Territories) Order 2005, SI 2005/854.

² ie the Convention on the Prohibition of the Development, Production, Stockpiling and the Use of Chemical Weapons and on their Destruction (Paris, 13 January 1993; Misc 21 (1993); Cm 2331) ('the Chemical Weapons Convention').

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473. Meaning of 'chemical weapons'.

Chemical weapons are:

- 44 (1) toxic chemicals¹ and their precursors²;
- 45 (2) munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them; and
- 46 (3) equipment designed for use in connection with munitions and devices falling within head (2) above³.

However, an object⁴ is not a chemical weapon if the use or intended use is only for permitted purposes⁵. Permitted purposes are: (a) peaceful purposes; (b) purposes related to protection against toxic chemicals; (c) legitimate military purposes⁶; and (d) purposes of enforcing the law⁷.

1 A 'toxic chemical' is a chemical which through its chemical action on life processes can cause death, permanent harm or temporary incapacity to humans or animals; and the origin, method of production and place of production are immaterial: Chemical Weapons Act 1996 s 1(5).

2 A 'precursor' is a chemical reactant which takes part at any stage in the production (by whatever method) of a toxic chemical: *ibid* s 1(6).

3 *Ibid* s 1(1).

4 References to an object include references to a substance: *ibid* s 1(7).

5 See *ibid* ss 1(2), 2(2), (3), 10(1), 11(2).

6 'Legitimate military purposes' are all military purposes except those which depend on the use of the toxic properties of chemicals as a method of warfare in circumstances where the main object is to cause death, permanent harm or temporary incapacity to humans or animals: *ibid* s 1(4).

7 *Ibid* s 1(3).

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474. Use, development, possession and transfer etc of chemical weapons.

No person may:

- 47 (1) use a chemical weapon¹;
- 48 (2) develop or produce a chemical weapon;
- 49 (3) have a chemical weapon in his possession;
- 50 (4) participate in the transfer² of a chemical weapon; or
- 51 (5) engage in military preparations, or in preparations of a military nature, intending to use a chemical weapon³.

In relation to the use of a chemical weapon, an object⁴ is not a chemical weapon if the person uses the object only for permitted purposes⁵; and, in deciding whether permitted purposes are intended, the types and quantities of objects must be taken into account⁶. In relation to the offences mentioned in heads (2) to (5) above, an object is not a chemical weapon if the person does the act mentioned with the intention that the object will be used only for permitted purposes; and, in deciding whether permitted purposes are intended, the types and quantities of objects must be taken into account⁷.

In proceedings for an offence under head (1), (3) or (4) above relating to an object, it is a defence for the accused to prove that he neither knew nor suspected nor had reason to suspect that the object was a chemical weapon; or that he knew or suspected it to be a chemical weapon and as soon as reasonably practicable after he first so knew or suspected he took all reasonable steps to inform the Secretary of State or a constable of his knowledge or suspicion⁸.

A person contravening these provisions⁹ is guilty of an offence and liable to a penalty¹⁰.

The offence applies to acts done in the United Kingdom or elsewhere¹¹, and so far as it applies to acts done outside the United Kingdom, it applies to United Kingdom nationals¹², Scottish partnerships, and bodies incorporated under the law of any part of the United Kingdom¹³. Proceedings for an offence committed outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom¹⁴. Her Majesty may by Order in Council extend the application of the provision, so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of the Channel Islands, the Isle of Man or any colony¹⁵.

1 For the meaning of 'chemical weapon' see PARA 473 ante.

2 A person participates in the transfer of an object if: (1) he acquires or disposes of the object or enters into a contract to acquire or dispose of it; or (2) he makes arrangements under which another person acquires or disposes of the object or another person enters into a contract to acquire or dispose of it: Chemical Weapons Act 1996 s 2(4). To acquire an object is to buy it, hire it, borrow it or accept it as a gift: s 2(5)(a). To dispose of an object is to sell it, let it on hire, lend it or give it: s 2(5)(b).

3 Ibid s 2(1).

4 As to the meaning of 'object' see PARA 473 note 4 ante.

5 For the meaning of 'permitted purposes' see PARA 473 ante.

6 Chemical Weapons Act 1996 s 2(2).

7 Ibid s 2(3).

8 Ibid s 2(6). However, this does not prejudice any defence which it is open to a person charged with an offence under s 2 to raise apart from s 2(6): s 2(7). As to the Secretary of State see PARA 413 note 14 ante.

9 Ie ibid s 2.

10 Ibid s 2(8). A person guilty of such an offence is liable on conviction on indictment to imprisonment for life: s 2(8).

In England and Wales, proceedings for an offence under s 2 may not be instituted except by or with the consent of the Attorney General; in Northern Ireland, they may not be instituted except by or with the consent of the Attorney General for Northern Ireland: s 31(1).

Proceedings for a chemical weapons offence may be instituted by the Director of Revenue and Customs Prosecutions or by order of the Commissioners for Her Majesty's Revenue and Customs if it appears to the Director or to the Commissioners that the offence has involved: (1) the development or production outside the United Kingdom of a chemical weapon; (2) the movement of a chemical weapon into or out of any country or territory; (3) any proposal or attempt to do anything falling within head (1) or head (2) supra: s 30A(1) (s 30A added by the Anti-terrorism, Crime and Security Act 2001 s 46; and the Chemical Weapons Act 1996 s 30A(1), (3), (4) amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 para 64). 'Chemical weapons offence' means an offence under the Chemical Weapons Act 1996 s 2 or the Anti-terrorism, Crime and Security Act 2001 s 50 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 629) (including an offence of aiding, abetting, counselling, procuring or inciting the commission of, or attempting or conspiring to commit, such an offence): Chemical Weapons Act 1996 s 30A(2) (as so added). Any proceedings for an offence which are instituted by order of the Commissioners under s 30A(1) (as added and amended) must be commenced in the name of an officer of Revenue and Customs, but may be continued by another officer: s 30A(3) (as so added and amended). Where the Commissioners investigate, or propose to investigate, any matter with a view to determining whether there are grounds for believing that a chemical weapons offence has been committed, or whether a person should be prosecuted for such an offence, that matter must be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 904): Chemical Weapons Act 1996 s 30A(4) (as so added and amended). Nothing in s 30A (as added and amended) affects any power of any person (including any officer) apart from s 30A (as added and amended): s 30A(5) (as so added). As to the Commissioners for Her Majesty's Revenue and Customs and the transfer to those Commissioners of the functions of the former Commissioners of Customs and Excise see PARA 415 note 6 ante.

11 Ibid s 3(1). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

12 A United Kingdom national is an individual who is: (1) a British citizen, a British overseas territories citizen, a British national (overseas) or a British overseas citizen; (2) a person who under the British Nationality

Act 1981 is a British subject; or (3) a British protected person within the meaning of that Act: Chemical Weapons Act 1996 s 3(4) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to British citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

13 Chemical Weapons Act 1996 s 3(2).

14 Ibid s 3(5).

15 Ibid s 3(3). In exercise of this power the following orders have been made: the Chemical Weapons Act 1996 (Jersey) Order 1998, SI 1998/2565; the Chemical Weapons Act 1996 (Isle of Man) Order 1998, SI 1998/2794; and the Chemical Weapons Act 1996 (Guernsey) Order 2000, SI 2000/743.

UPDATE

474 Use, development, possession and transfer etc of chemical weapons

NOTE 10--See further Serious Crime Act 2007 Sch 6 para 28 (references to common law offence of incitement).

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475. Suspicious objects.

If the Secretary of State has grounds to suspect that an object¹ is a chemical weapon² and there is at least one person who either appears to the Secretary of State to have the object in his possession or to have an interest which the Secretary of State believes is materially affected by the notice, he may serve on such a person a copy of a notice³ which:

- 52 (1) describes the object and states its location⁴;
- 53 (2) states that the Secretary of State suspects that the object is a chemical weapon and gives the reasons for his suspicion⁵;
- 54 (3) states that he is considering whether to secure its destruction⁶;
- 55 (4) states that any person may make representations that the object is not a chemical weapon⁷;
- 56 (5) states that a person on whom the notice is served and who has the object in his possession must not relinquish possession before a date specified in the notice⁸.

If a copy of such a notice is served on a person and the notice relates to an object in his possession at the time the copy is served, and he relinquishes possession before the date specified and he has no reasonable excuse for so relinquishing possession, he is guilty of an offence⁹. A person who knowingly makes a false or misleading statement in response to a copy of a notice is guilty of an offence¹⁰.

1 As to the meaning of 'object' see PARA 473 note 4 ante. As to the Secretary of State see PARA 413 note 14 ante.

2 For the meaning of 'chemical weapon' see PARA 473 ante. If an object is in the possession of a person who intends that it will be used only for permitted purposes, it is not a chemical weapon for the purposes of the Chemical Weapons Act 1996 s 4(1), (3); and in deciding whether permitted purposes are intended, the types and quantities of objects must be taken into account: s 10(1). As to permitted purposes see PARA 473 ante.

3 Ibid s 4(1). A notice, or a copy of a notice, under any provision of the Chemical Weapons Act 1996 may be served on a person: (1) by delivering it to him in person; (2) by sending it by post to him at his usual or last-

known residence or place of business in the United Kingdom; or (3) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it by post to the secretary or clerk of that body corporate at that office: s 34. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

4 Ibid s 4(3)(a).

5 Ibid s 4(3)(b).

6 Ibid s 4(3)(c). The object may be destroyed under ss 5-7 (see PARAS 476-478 post). For the purposes of ss 4-9, to the extent that an object consists of a toxic chemical (see PARA 473 note 1 ante) or precursor (see PARA 473 note 2 ante), it is destroyed if it is permanently prevented from being used other than for permitted purposes: s 10(2)(a). To the extent that an object consists of a munition or other device designed to cause death or harm through toxic chemicals released by it, it is destroyed if it is permanently prevented from doing so: s 10(2)(b). To the extent that an object consists of equipment designed for use in connection with a munition or other device, it is destroyed if it is permanently prevented from being so used: s 10(2)(c).

7 Ibid s 4(3)(d).

8 Ibid s 4(3)(e). Nothing in s 4 affects any power arising otherwise than by virtue of that provision (such as the power to dispose of property in police possession in connection with the investigation of a suspected offence): s 10(4).

9 Ibid s 9(1). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 9(4). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140; MAGISTRATES vol 29(2) (Reissue) PARA 804. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

10 Chemical Weapons Act 1996 s 9(5). A person guilty of such an offence is liable on summary conviction to fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 9(5). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

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476. Power to remove or immobilise objects.

If the Secretary of State has reasonable cause to believe that: (1) an object¹ is on premises² to which the public has access or which are occupied by a person who consents to action being taken; and (2) the object is a chemical weapon³, the Secretary of State may authorise a person to enter the premises and to search them⁴. If a justice of the peace is satisfied on information on oath that there is reasonable cause to believe that an object is on premises (of whatever nature) and that it is a chemical weapon, he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them⁵.

A person who acts under an authorisation given under these provisions may take with him such other persons and such equipment as appear to him to be necessary⁶. If a person enters premises under such an authorisation and the object is found there, he may make the object safe⁷ and he may seize and remove it, if it is reasonably practicable to do so, or he may, in any

other case, affix a warning to the object, or to something in a conspicuous position near the object, stating that the object is not to be moved or interfered with before a date specified in the warning⁸.

These powers conferred on an authorised person are only exercisable in the presence of a constable, if the authorisation or the warrant so provides⁹. A person who wilfully obstructs a person in (a) entering or searching premises under the authorisation¹⁰; (b) making an object safe, seizing or removing an object, or affixing a warning¹¹; or (c) attempting to do anything mentioned in heads (a) and (b) above, is guilty of an offence¹².

1 As to the meaning of 'object' see PARA 473 note 4 ante. As to the Secretary of State see PARA 413 note 14 ante.

2 For the purposes of the Chemical Weapons Act 1996 ss 5-9, 'premises' includes land (including buildings), movable structures, vehicles, vessels, aircraft and hovercraft: s 10(3).

3 For the meaning of 'chemical weapon' see PARA 473 ante. If an object is in the possession of a person who intends that it will be used only for permitted purposes, it is not a chemical weapon for the purposes of ibid s 5(1), (2); and in deciding whether permitted purposes are intended the types and quantities of objects must be taken into account: s 10(1). As to permitted purposes see PARA 473 ante.

4 Ibid s 5(1).

5 Ibid s 5(2).

6 Ibid s 5(3).

7 An object is made safe if, without being destroyed, it is prevented from being an immediate danger (as where a fuse is neutralised or the object is smothered in foam): ibid s 5(5). As to the manner of destruction see PARA 475 note 6 ante.

8 Ibid s 5(4). If a warning is affixed and a person interferes with the warning, or moves or interferes with the object before the date specified in the warning, and he has no reasonable excuse for doing so, he is guilty of an offence: s 9(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 9(4). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for this offence may not be instituted except by or with the consent of the Secretary of State: s 31(2).

Nothing in s 5 affects any power arising otherwise than by virtue of that provision (such as a power to dispose of property in police possession in connection with the investigation of a suspected offence): s 10(4).

9 Ibid s 5(6). Section 5 applies whether or not any copy of a notice has been served under s 4 (see PARA 475 ante): s 5(7).

10 Ie under ibid s 5(1) or (2): see the text to notes 1-5 supra.

11 Ie under ibid s 5(4): see the text to notes 7-8 supra.

12 See ibid s 9(2)(a), (b), (d). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 9(4). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

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477. Power to destroy objects removed from premises.

If the object¹ is removed from the premises², and if at any time in the second six-month period³ the Secretary of State decides that the object should be destroyed⁴, he may authorise a person to destroy it⁵. If the object is removed, and if at any time in the first six-month period any person appears to the Secretary of State to have had the object in his possession immediately before its removal, or any other person appears to the Secretary of State to have an interest which the Secretary of State believes would be materially affected by the object's destruction, the Secretary of State must serve on that person a copy of a notice⁶ which:

- 57 (1) describes the object and states its location⁷;
- 58 (2) states that the Secretary of State proposes to secure its destruction and gives the reasons for his proposal⁸;
- 59 (3) states that the person on whom the copy of the notice is served may object to the Secretary of State's proposal⁹; and
- 60 (4) states that an objection (if made) must be made in writing to the Secretary of State before such date as is specified in the notice and must state why the object should not be destroyed¹⁰.

A person who knowingly makes a false or misleading statement in response to a copy of a notice is guilty of an offence¹¹.

Before the Secretary of State reaches a decision as to the object's proposed destruction, he must allow any person on whom a copy of the notice has been served time to respond, and he must take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise)¹². If an object is removed from the premises and destroyed, the Secretary of State may recover any costs reasonably incurred by him in connection with that removal and destruction from a responsible person¹³.

If an object is removed from premises and at the end of the second six-month period the Secretary of State has not authorised the destruction of the object and a person had possession of the object immediately before its removal, the Secretary of State must return the object to that person, or, if there is more than one, to such of them as the Secretary of State thinks appropriate¹⁴.

1 As to the meaning of 'object' see PARA 473 note 4 ante.

2 I.e. under the Chemical Weapons Act 1996 s 5: see PARA 476 ante. As to the meaning of 'premises' see PARA 476 note 2 ante.

3 The first six-month period is the period of six months beginning with the day after the removal of the object: *ibid* s 6(1)(a). The second six-month period is the period of six months beginning with the day after the first six-month period ends: s 6(1)(b).

4 As to the manner of destruction see PARA 475 note 6 ante. As to the Secretary of State see PARA 413 note 14 ante.

5 Chemical Weapons Act 1996 s 6(1), (2). If a person wilfully obstructs a person in destroying an object under an authorisation given under s 6(2) or in attempting to do so, he is guilty of an offence and is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 9(2)(c), (d), (4). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

Nothing in s 6 affects any power arising otherwise than by virtue of that provision (such as a power to dispose of property in police possession in connection with the investigation of a suspected offence): s 10(4).

6 *Ibid* s 6(3). As to the service of notices see PARA 475 note 3 ante.

7 *Ibid* s 6(4)(a).

8 *Ibid* s 6(4)(b).

9 Ibid s 6(4)(c).

10 Ibid s 6(4)(d).

11 Ibid s 9(5). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 9(5). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

12 Ibid s 6(5).

13 Ibid s 6(6). A responsible person is any person who had possession of the object immediately before its removal: see s 6(6).

14 Ibid s 6(7).

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478. Power to enter premises and destroy objects.

Where a warning has been affixed to the object or to something in a conspicuous position near the object¹, if at any time in the second six-month period² the Secretary of State decides that the object should be destroyed³, it may be destroyed in accordance with the statutory provisions⁴. If at any time in the second six-month period the Secretary of State does decide that the object should be destroyed, and the object is on premises⁵ to which the public has access or which are occupied by a person who consents to action being taken, the Secretary of State may authorise a person to enter premises and to destroy the object if it is found there⁶. If (whatever the nature of the premises concerned) a justice of the peace is satisfied on information on oath that a warning has been affixed⁷ and that the Secretary of State has decided at any time in the second six-month period that the object should be destroyed, he may issue a warrant authorising a person acting under the Secretary of State's authority to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to destroy the object if it is found there⁸. A person acting under such authorisation may take with him such other persons and such equipment as appear to him to be necessary⁹. These powers conferred on an authorised person are only exercisable in the presence of a constable, if the authorisation or warrant so provides¹⁰.

A person is guilty of an offence if he wilfully obstructs a person:

- 61 (1) in entering or searching premises under an authorisation¹¹; or
- 62 (2) in destroying an object under an authorisation¹²; or
- 63 (3) in attempting to do anything mentioned in heads (1) and (2) above¹³.

If at any time in the first six-month period¹⁴ any person appears to the Secretary of State to have had the object in his possession immediately before the warning was affixed, or any other person appears to the Secretary of State to have an interest which the Secretary of State believes would be materially affected by the object's destruction, the Secretary of State must serve on that person a copy of a notice¹⁵ which:

- 64 (a) describes the object and states its location¹⁶;

- 65 (b) states that the Secretary of State proposes to secure its destruction and gives the reasons for his proposal¹⁷;
- 66 (c) states that the person on whom the copy of the notice is served may object to the Secretary of State's proposal¹⁸; and
- 67 (d) states that an objection (if made) must be made in writing to the Secretary of State before such date as is specified in the notice and must state why the object should not be destroyed¹⁹.

A person who knowingly makes a false or misleading statement in response to a copy of a notice is guilty of an offence²⁰.

Before he reaches a decision as to the object's destruction, the Secretary of State must allow any person on whom a copy of a notice has been served time to respond, and must take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise)²¹.

Where an object is destroyed under these provisions, the Secretary of State may recover any costs reasonably incurred by him in connection with that destruction from a responsible person²².

1 Ie under the Chemical Weapons Act 1996 s 5: see PARA 476 ante. As to the meaning of 'object' see PARA 473 note 4 ante.

2 The first six-month period is the period of six months beginning with the day after the warning was affixed: *ibid* s 7(1)(a). The second six-month period is the period of six months beginning with the day after the first six-month period ends: s 7(1)(b).

3 As to the manner of destruction see PARA 475 note 6 ante. As to the Secretary of State see PARA 413 note 14 ante.

4 Chemical Weapons Act 1996 s 7(1), (2). Nothing in s 7 affects any power arising otherwise than by virtue of that provision (such as a power to dispose of property in police possession in connection with the investigation of a suspected offence): s 10(4).

5 As to the meaning of 'premises' see PARA 476 note 2 ante.

6 Chemical Weapons Act 1996 s 7(6).

7 Ie under *ibid* s 5: see PARA 476 ante.

8 *Ibid* s 7(7).

9 *Ibid* s 7(8).

10 *Ibid* s 7(9).

11 Ie authorisation given under *ibid* s 7(6) or (7): see the text to notes 5-8 *supra*.

12 See note 11 *supra*.

13 See the Chemical Weapons Act 1996 s 9(2)(a), (c), (d). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 9(4). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

14 See note 2 *supra*.

15 Chemical Weapons Act 1996 s 7(3). As to the service of notices see PARA 475 note 3 ante.

16 *Ibid* s 7(4)(a).

17 *Ibid* s 7(4)(b).

18 Ibid s 7(4)(c).

19 Ibid s 7(4)(d).

20 Ibid s 9(5). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 9(5). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

21 Ibid s 7(5).

22 Ibid s 7(10). A responsible person is any person who had possession of the object immediately before the warning was affixed under s 5 (see PARA 476 ante): s 7(10).

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479. Compensation for destruction of object.

If a person claims that an object¹ has been destroyed² and that he had an interest which was materially affected by the destruction and he sustained loss as a result, and that no copy of a notice³ was served on him, he may make an application for compensation⁴. If he makes an application for compensation to the High Court and the court finds that his claim is justified, the court may order the Secretary of State to pay to the applicant such amount (if any) by way of compensation as the court considers just⁵. If the court believes that the object would have been destroyed even if a copy of a notice had been served on the applicant, it must not order compensation to be paid under this provision⁶.

1 As to the meaning of 'object' see PARA 473 note 4 ante.

2 I.e destroyed under the Chemical Weapons Act 1996 s 6 or s 7: see PARAS 477-478 ante. As to the manner of destruction see PARA 475 note 6 ante.

3 I.e a notice under the provision concerned: see ibid s 8(1). As to the service of notices see PARA 475 note 3 ante.

4 See ibid s 8(1).

5 Ibid s 8(2).

6 Ibid s 8(3).

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480. Premises for producing chemical weapons.

No person may:

- 68 (1) construct premises he intends to be used to produce chemical weapons¹;

- 69 (2) alter premises in circumstances where he intends that they will be used to produce chemical weapons²;
- 70 (3) install or construct equipment he intends to be used to produce chemical weapons³;
- 71 (4) alter equipment in circumstances where he intends that it will be used to produce chemical weapons⁴;
- 72 (5) permit the construction on land he occupies of premises he intends to be used to produce chemical weapons⁵;
- 73 (6) permit premises on land he occupies to be altered in circumstances where he intends that they will be used to produce chemical weapons⁶;
- 74 (7) permit the installation or construction on land he occupies of equipment he intends to be used to produce chemical weapons⁷;
- 75 (8) permit equipment on land he occupies to be altered in circumstances where he intends that it will be used to produce chemical weapons⁸.

A person contravening these provisions is guilty of an offence⁹.

1 Chemical Weapons Act 1996 s 11(1)(a). For the meaning of 'chemical weapons' see PARA 473 ante. For the purposes of s 11(1), an object is not a chemical weapon if the person intends that the object will be used only for permitted purposes; and in deciding whether permitted purposes are intended the types and quantities of objects are to be taken into account: s 11(2). As to the meaning of 'object' see PARA 473 note 4 ante. As to permitted purposes see PARA 473 ante.

2 Ibid s 11(1)(b).

3 Ibid s 11(1)(c).

4 Ibid s 11(1)(d).

5 Ibid s 11(1)(e).

6 Ibid s 11(1)(f).

7 Ibid s 11(1)(g).

8 Ibid s 11(1)(h).

9 Ibid s 11(3). A person guilty of such an offence is liable on conviction on indictment to imprisonment for life: s 11(3). In England and Wales, proceedings for an offence under s 11 may not be instituted except by or with the consent of the Attorney General; and, in Northern Ireland, they may not be instituted except by or with the consent of the Attorney General for Northern Ireland: s 31(1).

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481. Suspicion of existence of chemical weapons facilities.

If the Secretary of State has grounds to suspect that any equipment or building is a chemical weapons production facility¹, and there is at least one person who falls within the relevant provision², the Secretary of State may serve on any person falling within that provision a copy of a notice³ which:

- 76 (1) describes the equipment or building and states its location⁴;

- 77 (2) states that the Secretary of State suspects that the equipment or building is a chemical weapons production facility and gives the reasons for his suspicion⁵;
- 78 (3) states that he is considering whether to require the equipment or building to be destroyed⁶ or altered⁷; and
- 79 (4) states that any person may make representations that the equipment or building is not a chemical weapons production facility⁸.

A person who knowingly makes a false or misleading statement in response to such a notice is guilty of an offence⁹.

If the notice relates to equipment it must state that the person on whom the notice is served and who has the equipment in his possession must not relinquish possession of, or alter or use, the equipment before a date specified in the notice¹⁰. If a person is served with a copy of a notice¹¹, relating to equipment in his possession at the time the copy is served, and he relinquishes possession of, or alters or uses, the equipment before the date specified¹² without reasonable excuse for doing so, he is guilty of an offence¹³.

1 For the purposes of the Chemical Weapons Act 1996 ss 12-15, 'chemical weapons production facility' has the meaning given in the Chemical Weapons Convention (see PARA 472 note 2 ante): see the Chemical Weapons Act 1996 ss 1(8), 18(1). For the meaning of 'chemical weapons' see PARA 473 ante. As to the Secretary of State see PARA 413 note 14 ante.

2 le *ibid* s 12(2). The persons falling within s 12(2) are:

- 4 (1) any person who appears to the Secretary of State to occupy the land on which the equipment or building is situated (s 12(2)(a));
- 5 (2) if the Secretary of State's suspicion relates to equipment, any person not falling within head (1) *supra* and who appears to the Secretary of State to have the equipment in his possession (s 12(2)(b)); and
- 6 (3) any person not falling within head (1) or head (2) *supra* and who appears to the Secretary of State to have an interest which the Secretary of State believes is materially affected by the notice (s 12(2)(c)).

3 *Ibid* s 12(1). As to the service of notices see PARA 475 note 3 ante.

4 *Ibid* s 12(3)(a).

5 *Ibid* s 12(3)(b).

6 For the purposes of *ibid* ss 12-16, 'destroyed' and 'destruction' in relation to a building mean demolished and demolition: s 18(2).

7 *Ibid* s 12(3)(c).

8 *Ibid* s 12(3)(d).

9 *Ibid* s 17(5). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 17(5). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

10 *Ibid* s 12(4). Nothing in s 12 affects any power arising otherwise than by virtue of that provision (such as the power to dispose of property in police possession in connection with the investigation of a suspected offence): s 18(3).

11 le under *ibid* s 12.

12 le under *ibid* s 12(4): see the text to note 10 *supra*.

13 Ibid s 17(1). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 17(4). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

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482. Notice requiring destruction or alteration of equipment or chemical weapons production facility.

Irrespective of whether or not a copy of a notice has been served¹ relating to suspicious equipment or buildings², if the Secretary of State has reasonable cause to believe that any equipment or building is a chemical weapons production facility³, and at least one person falls within the relevant provision⁴, the Secretary of State may serve on each person falling within that provision a copy of a notice⁵ which:

- 80 (1) describes the equipment or building and states its location⁶;
- 81 (2) states that the Secretary of State believes the equipment or building is a chemical weapons production facility⁷; and
- 82 (3) requires the equipment or building to be destroyed⁸ or altered (as the case may be) in a manner, and before a date, specified in the notice⁹.

If such a notice requires any equipment or building to be altered, a further notice may revoke the first notice, and require the equipment or building to be destroyed¹⁰.

If a person is served with a copy of a notice¹¹, relating to equipment in his possession at the time the copy is served or to a building situated on land he occupies at that time, and any requirement set out in the notice is not fulfilled, he is guilty of an offence, unless he has a reasonable excuse for the requirement not being fulfilled¹².

If a justice of the peace is satisfied on information on oath that the qualifying condition is fulfilled¹³, he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State to take remedial action¹⁴. A person so authorised may: (a) enter the land on which the equipment or building is situated, if necessary by force¹⁵; (b) do whatever is required to secure that the equipment or building is destroyed or altered in a manner specified in the notice¹⁶; (c) take with him such other persons and such equipment as appear to him to be necessary to help him to exercise the powers mentioned in heads (a) and (b) above¹⁷. These powers are only exercisable in the presence of a constable, if the warrant so provides¹⁸. If anything is done in exercise of these powers¹⁹, the Secretary of State may recover any costs reasonably so incurred by him from a responsible person²⁰.

A person is guilty of an offence if he wilfully obstructs a person exercising, or attempting to exercise, the powers mentioned in head (a) or head (b) above or any other person taken with him as mentioned in head (c) above and helping him, or attempting to help him, to exercise those powers²¹.

1 As to the service of notices see PARA 475 note 3 ante.

2 Ie under the Chemical Weapons Act 1996 s 12 (see PARA 481 ante): s 13(5).

3 As to the meaning of 'chemical weapons production facility' see PARA 481 note 1 ante. For the meaning of 'chemical weapons' see PARA 473 ante. As to the Secretary of State see PARA 413 note 14 ante.

4 le the Chemical Weapons Act 1996 s 13(2). The persons falling within s 13(2) are:

- 7 (1) any person who appears to the Secretary of State to occupy the land on which the equipment or building is situated (s 13(2)(a));
- 8 (2) if the Secretary of State's belief relates to equipment, any person not falling within head (1) supra and who appears to the Secretary of State to have the equipment in his possession (s 13(2)(b)); and
- 9 (3) any person not falling within head (1) or head (2) supra and who appears to the Secretary of State to have an interest which the Secretary of State believes would be materially affected by the destruction or alteration of the equipment or building (s 13(2)(c)).

5 Ibid s 13(1).

6 Ibid s 13(3)(a).

7 Ibid s 13(3)(b).

8 For the meaning of 'destroyed' see PARA 481 note 6 ante.

9 Chemical Weapons Act 1996 s 13(3)(c).

10 Ibid s 13(4). In this case, the provisions of s 13(1)-(3) apply to the further notice accordingly: s 13(4). Nothing in s 13 affects any power arising otherwise than by virtue of that provision (such as the power to dispose of property in police possession in connection with the investigation of a suspected offence): s 18(3).

11 le under ibid s 13.

12 Ibid s 17(2). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 17(4). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

13 le that: (1) a notice has been prepared under ibid s 13; (2) the provisions of s 13(1)-(3) have been complied with; (3) the notice has not been revoked; and (4) any requirement set out in the notice has not been complied with: s 14(1).

14 Ibid s 14(2). Nothing in s 14 affects any power arising otherwise than by virtue of that provision (such as the power to dispose of property in police possession in connection with the investigation of a suspected offence): s 18(3).

15 Ibid s 14(3)(a).

16 Ibid s 14(3)(b).

17 Ibid s 14(3)(c).

18 Ibid s 14(4).

19 le the powers mentioned in ibid s 14.

20 Ibid s 14(5). A responsible person is: (1) in the case of equipment, any person in possession of the equipment at the time the land is entered; (2) in the case of a building, any person occupying the land at the time it is entered: s 14(5).

21 Ibid s 17(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 17(4). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

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483. Position where no notice can be served.

If a justice of the peace is satisfied on information on oath that the qualifying condition is fulfilled¹, he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State to take remedial action².

If a person is authorised by a warrant to take such remedial action he may: (1) enter the land on which the equipment or building is situated, if necessary by force³; (2) do whatever is required to secure that the equipment or building is destroyed or altered in a manner specified in the proposals drawn up by the Secretary of State⁴; (3) take with him such other persons and such equipment as appear to him to be necessary to help him to exercise the powers mentioned in heads (1) and (2) above⁵. These powers conferred on an authorised person are only exercisable in the presence of a constable, if the warrant so provides⁶. If anything is done in exercise of these powers, the Secretary of State may recover any costs reasonably incurred by him in connection with their exercise from a responsible person⁷.

A person is guilty of an offence if he wilfully obstructs a person exercising, or attempting to exercise, the powers mentioned in head (1) or head (2) above, or any other person taken with him as mentioned in head (3) above and helping him, or attempting to help him, to exercise those powers⁸.

1. It is that: (1) the Secretary of State has reasonable cause to believe that any equipment or building is a chemical weapons production facility; (2) in the period of six months beginning with the day after he formed his belief it has not been possible to serve a copy of a notice under the Chemical Weapons Act 1996 s 13 (see PARA 482 ante) because of certain circumstances; and (3) the Secretary of State has drawn up proposals for the destruction (see PARA 481 note 6 ante) or alteration of the equipment or building in a manner specified in the proposals: s 15(1). As to the meaning of 'chemical weapons production facility' see PARA 481 note 1 ante. For the meaning of 'chemical weapons' see PARA 473 ante. As to the service of notices see PARA 475 note 3 ante. As to the Secretary of State see PARA 413 note 14 ante.

The circumstances referred to in head (2) supra are that:

- 10 (a) no person appeared to the Secretary of State to occupy the land on which the equipment or building is situated (s 15(2)(a));
- 11 (b) if the Secretary of State's belief relates to equipment, no person appeared to the Secretary of State to have the equipment in his possession (s 15(2)(b)); and
- 12 (c) no person appeared to the Secretary of State to have an interest which the Secretary of State believed would be materially affected by the destruction or alteration of the equipment or building (s 15(2)(c)).

2. Ibid s 15(3). Nothing in s 15 affects any power arising otherwise than by virtue of that provision (such as the power to dispose of property in police possession in connection with the investigation of a suspected offence): s 18(3).

3. Ibid s 15(4)(a).

4. Ibid s 15(4)(b).

5. Ibid s 15(4)(c).

6. Ibid s 15(5).

7. Ibid s 15(6). A responsible person is: (1) in the case of equipment, any person in possession of the equipment at the time the land is entered; (2) in the case of a building, any person occupying the land at the time it is entered: s 15(6)(a), (b).

8. Ibid s 17(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 17(4). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

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484. Compensation for destruction or alteration.

An application for compensation may be made where a person claims that:

- 83 (1) any equipment or building has been destroyed¹ or altered in compliance with a notice² or has been destroyed or altered as a result of such a notice not being complied with³;
- 84 (2) he had an interest which was materially affected by the destruction or alteration and he sustained loss as a result⁴; and
- 85 (3) no copy of a notice was served⁵.

An application may also be made where a person claims that: (a) any equipment or building has been destroyed or altered because no notice could be served⁶; and (b) he had an interest which was materially affected by the destruction or alteration and he sustained loss as a result⁷.

If the person concerned makes an application under this provision to the High Court and the court finds that his claim is justified, the court may order the Secretary of State to pay to the applicant such amount (if any) by way of compensation as the court considers just⁸. If the court believes that the equipment or building would have been destroyed or altered even if a copy of a notice had been served on the applicant⁹, it must not order compensation to be paid under this provision¹⁰.

1 For the meaning of 'destroyed' see PARA 481 note 6 ante.

2 Ie in compliance with a notice falling within the Chemical Weapons Act 1996 s 13(3): see PARA 482 ante. As to the service of notices see PARA 475 note 3 ante.

3 Ibid s 16(1)(a). Such destruction or alteration is permitted under s 14: see PARA 482 ante.

4 Ibid s 16(1)(b).

5 Ibid s 16(1)(c). The notice referred to in the text is a notice served under s 13: see PARA 482 ante.

6 Ie under ibid s 15: see PARA 483 ante.

7 Ibid s 16(2).

8 Ibid s 16(3). As to the Secretary of State see PARA 413 note 14 ante.

9 Ie under ibid s 13: see PARA 482 ante.

10 Ibid s 16(4).

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485. Restrictions on the use of certain chemicals for permitted purposes.

No person may: (1) use a Schedule 1 toxic chemical or precursor¹ for a permitted purpose²; or (2) produce or have in his possession a Schedule 1 toxic chemical or precursor with the intention that it will be used for a permitted purpose³. A person contravening this provision is guilty of an offence⁴.

However, this provision does not apply to anything done in accordance with the terms of a licence granted by the Secretary of State and having effect at the time it is done⁵. The Secretary of State may grant a licence in such circumstances and on such terms as he thinks fit, and may vary or revoke a licence by serving a notice to that effect on the person to whom the licence was granted⁶. A variation or revocation takes effect at such reasonable time as is specified in the notice⁷. The Secretary of State may by order make provision with respect to appealing against a refusal to grant, renew or vary a licence or against a variation or revocation of a licence⁸.

A person who knowingly makes a false or misleading statement for the purpose of obtaining a licence or a renewal or variation of a licence, or of opposing a variation or revocation of a licence, is guilty of an offence⁹.

1 A Schedule 1 toxic chemical or precursor is a toxic chemical or precursor listed in Schedule 1 to the annex on chemicals to the Chemical Weapons Convention (see PARA 472 note 2 ante); and Schedule 1 is set out in the Schedule to the Chemical Weapons Act 1996: s 19(2), Schedule. For the meaning of 'toxic chemical' see PARA 473 note 1 ante; and for the meaning of 'precursor' see PARA 473 note 2 ante.

2 As to permitted purposes see PARA 473 ante.

3 Chemical Weapons Act 1996 s 19(1).

4 Ibid s 19(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 19(3). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2). As to the Secretary of State see PARA 413 note 14 ante.

5 Ibid s 20(1).

6 Ibid s 20(2).

7 Ibid s 20(3).

8 Ibid s 20(4). An order under s 20(4) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 20(5). As to the order that has been made see the Chemical Weapons (Licence Appeal Provisions) Order 1996, SI 1996/3030.

9 Chemical Weapons Act 1996 s 20(6). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 20(6). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

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486. Information required for statutory purposes.

If the Secretary of State has grounds to suspect that a person is committing or has committed an offence under the Chemical Weapons Act 1996, the Secretary of State may by notice served on the person require him to give specified information¹. The information required must be information which the Secretary of State has reasonable cause to believe will help to establish whether the person is committing or has committed an offence². A person who without reasonable excuse fails to comply with a notice served on him is guilty of an offence³; and a person on whom a notice is served, and who knowingly makes a false or misleading statement in response to it, is also guilty of an offence⁴.

1 Chemical Weapons Act 1996 s 21(1). As to the service of notices see PARA 475 note 3 ante. The information must be given in such form, and within such reasonable period, as is specified in the notice: see s 21(1). As to the Secretary of State see PARA 413 note 14 ante.

2 See *ibid* s 21(1).

3 *Ibid* s 21(2). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 21(2). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

4 *Ibid* s 21(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 21(3). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

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487. Information and records for the purposes of the Chemical Weapons Convention.

The Secretary of State may by notice¹ served on any person² require him to give certain information³. The information required must be information which the Secretary of State has reasonable cause to believe is or will be needed in connection with anything to be done for the purposes of the Chemical Weapons Convention⁴; and the information may relate to a state of affairs subsisting before the coming into force of the Chemical Weapons Act 1996 or of the convention⁵. A person on whom such a notice is served, and who knowingly makes a false or misleading statement in response to it, is guilty of an offence⁶.

The Secretary of State may by notice served on any person require him to keep such records as are specified in the notice; and the records must be records which the Secretary of State has reasonable cause to believe will facilitate the giving of required⁷ information⁸.

A person who without reasonable excuse fails to comply with a notice served on him under these provisions is guilty of an offence⁹.

1 As to the service of notices see PARA 475 note 3 ante. As to the Secretary of State see PARA 413 note 14 ante.

2 The Secretary of State may make regulations (which must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Chemical Weapons Act 1996 s 23(6)) requiring persons of any description specified in the regulations to inform him that they are of such a description: s 23(1). Any such description must be so framed that persons within it are persons on whom the Secretary of State is likely to want to serve a notice under s 22 (see the text and notes 3-9 *infra*): s 23(2). The

Secretary of State must arrange for a statement of the fact that such regulations have been made to be published in such manner as is likely to bring them to the attention of persons affected by them: s 23(3); and see the London Gazette, 31 October 1996. In the exercise of these powers the Secretary of State has made the Chemical Weapons (Notification) Regulations 1996, SI 1996/2503 (amended by SI 1996/2669; SI 2004/2406) which describe certain persons who have to identify themselves to the Secretary of State as being persons on whom it is likely he will want to serve a notice under the Chemical Weapons Act 1996 s 22.

A person who without reasonable excuse fails to comply with a requirement imposed by the regulations is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 23(4). A person who knowingly makes a false or misleading statement in response to a requirement imposed by the regulations is guilty of an offence, and is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 23(5). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for offences under these provisions may not be instituted except by or with the consent of the Secretary of State: s 31(2).

3 Ibid s 22(1). The information required must be specified in the notice; and must be given in such form, and within such reasonable period, as is specified in the notice: see s 22(1).

4 As to the Chemical Weapons Convention see PARA 472 note 2 ante.

5 Chemical Weapons Act 1996 s 22(1).

6 Ibid s 22(4). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 22(4). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

7 Ie required under ibid s 22(1).

8 Ibid s 22(2).

9 Ibid s 22(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 22(3). Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2).

UPDATE

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NOTE 2--SI 1996/2503 further amended: SI 2007/3224.

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488. Inspection authorisations.

If it is proposed to conduct a routine inspection¹, a challenge inspection² or an assistance inspection³ in the United Kingdom, the Secretary of State may issue an authorisation⁴. An authorisation must:

- 86 (1) contain a description of the area (the specified area⁵) in which the inspection is to be conducted⁶;
- 87 (2) specify the type of inspection concerned⁷;
- 88 (3) state the names of the members of the inspection team⁸ by whom the inspection is to be carried out⁹; and

- 89 (4) in the case of a challenge inspection, state the name of any observer¹⁰ who may accompany the team¹¹.

Such an authorisation has the effect of authorising the inspection team to exercise within the specified area such rights of access, entry and unobstructed inspection as are conferred on them by the verification annex¹², and to do such other things within that area in connection with the inspection as they are entitled to do by virtue of the verification annex (including things concerning the maintenance, replacement or adjustment of any instrument or other object)¹³. The Secretary of State may reimburse any person in respect of expenditure incurred in connection with a routine inspection, a challenge inspection or an assistance inspection¹⁴.

An authorisation has, in addition, the effect of authorising an in-country escort¹⁵ to accompany the inspection team in accordance with the provisions of the verification annex¹⁶, and authorising any constable to give such assistance as the in-country escort may request for the purpose of facilitating the conduct of the inspection in accordance with the verification annex¹⁷. In the case of a challenge inspection, an authorisation also has the effect of authorising the observer to exercise within the specified area such rights of access and entry as are conferred on him by the verification annex¹⁸.

The occupier of any premises in relation to which it is proposed to exercise a right of entry in reliance on an authorisation, or on which an inspection is being carried out in reliance on such an authorisation, or a person acting on behalf of the occupier of any such premises, is entitled to require a copy of the authorisation to be shown to him by a member of the in-country escort¹⁹.

The validity of any authorisation purporting to be issued under this provision in respect of any inspection may not be called in question in any court of law at any time before the conclusion of that inspection²⁰. Accordingly, where an authorisation purports to be issued under this provision in respect of any inspection, no proceedings (of whatever nature) may be brought at any time before the conclusion of the inspection if they would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the inspection²¹.

If, in any proceedings, any question arises whether a person at any time was or was not, in relation to any routine, challenge or assistance inspection, a member of the inspection team or a member of the in-country escort or the observer, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is conclusive evidence of that fact²².

1 A 'routine inspection' is an inspection conducted pursuant to Pts II-IX of the verification annex on implementation and verification to the Chemical Weapons Convention (see PARA 472 note 2 ante): Chemical Weapons Act 1996 s 24(a), (b).

2 A 'challenge inspection' is an inspection conducted pursuant to Pts II and X of the verification annex to the convention (see note 1 supra): Chemical Weapons Act 1996 s 24(c).

3 An 'assistance inspection' is an inspection conducted pursuant to Pts II and XI of the verification annex to the convention (see note 1 supra): Chemical Weapons Act 1996 s 24(d).

4 Ibid s 25(1). For the meaning of 'United Kingdom' see PARA 402 note 4 ante. As to the Secretary of State see PARA 413 note 14 ante.

5 If an authorisation is issued under ibid s 25, the Secretary of State may issue an amendment varying the specified area and: (1) from the time when the amendment is expressed to take effect s 25 applies as if the specified area were the area as varied (s 25(11)(a)); (2) the validity of the amendment may not be called into question in any court of law at any time before the conclusion of the inspection (see s 25(8), (11)(b)); and (3) the Secretary of State may issue further amendments varying the specified area and in such a case heads (1) and (2) supra apply (s 25(11)(c)).

6 Ibid s 25(2)(a).

- 7 Ibid s 25(2)(b).
- 8 'Inspection team' has the meaning given in Pt I of the verification annex to the convention (see note 1 supra): Chemical Weapons Act 1996 s 24(e).
- 9 Ibid s 25(2)(c).
- 10 'Observer' has the meaning given in Pt I of the verification annex to the convention (see note 1 supra): Chemical Weapons Act 1996 s 24(e).
- 11 Ibid s 25(2)(d).
- 12 Ibid s 25(3)(a). As to the verification annex see note 1 supra.
- 13 Chemical Weapons Act 1996 s 25(3)(b). As to the meaning of 'object' see PARA 473 note 4 ante.
- 14 Ibid s 28.
- 15 'In-country escort' has the meaning given in Pt I of the verification annex to the convention (see note 1 supra): Chemical Weapons Act 1996 s 24(e).
- 16 Ibid s 25(4)(a).
- 17 Ibid s 25(4)(b). The name of the person in charge of the in-country escort must be stated in the authorisation: s 25(4). Any constable giving assistance in accordance with s 25(4)(b) may use such reasonable force as he considers necessary for the purpose mentioned in that provision: s 25(6).
- 18 Ibid s 25(5).
- 19 Ibid s 25(7).
- 20 Ibid s 25(8).
- 21 Ibid s 25(9).
- 22 Ibid s 25(10).

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489. Offences in connection with inspections.

If an authorisation has been issued in respect of any inspection¹, a person is guilty of an offence² if he:

- 90 (1) refuses without reasonable excuse to comply with any request made by any constable or a member of the in-country escort³ for the purpose of facilitating the conduct of that inspection in accordance with the verification annex⁴;
- 91 (2) interferes without reasonable excuse with any container, instrument or other object installed in the course of that inspection in accordance with the verification annex⁵; or
- 92 (3) wilfully obstructs any member of the inspection team⁶ or of the in-country escort, or the observer, in the conduct of that inspection in accordance with the verification annex⁷.

1 ie under the Chemical Weapons Act 1996 s 25: see PARA 488 ante.

2 Ibid s 26(1). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to a fine: s 26(3). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for an offence under this provision may not be instituted except by or with the consent of the Secretary of State: s 31(2). As to the Secretary of State see PARA 413 note 14 ante.

3 As to the meaning of 'in-country escort' see PARA 488 note 15 ante.

4 Chemical Weapons Act 1996 s 26(1)(a). As to the verification annex see PARA 488 note 1 ante.

5 Chemical Weapons Act 1996 s 26(1)(b). This applies to interference which occurs at any time while the container, instrument or other object is retained in accordance with the verification annex: s 26(2).

6 As to the meaning of 'inspection team' see PARA 488 note 8 ante.

7 Chemical Weapons Act 1996 s 26(1)(c).

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490. Privileges and immunities in connection with inspections.

Members of inspection teams¹ and observers² enjoy the same privileges and immunities as are enjoyed by diplomatic agents³. Samples and approved equipment⁴ carried by members of an inspection team are inviolable and exempt from customs duties⁵. The privileges and immunities accorded to members of inspection teams and observers are enjoyed by them at any time when they are in the United Kingdom in connection with the carrying out there of a routine inspection⁶, a challenge inspection⁷ or an assistance inspection⁸, or while in transit to or from the territory of another party to the Chemical Weapons Convention⁹ in connection with the carrying out of such an inspection there¹⁰. If the immunity of a member of an inspection team is waived¹¹, and a notice made by the Secretary of State and informing the member of the waiver is delivered to him in person, then, from the time the notice is so delivered, these provisions do not have effect to confer immunity on that member¹².

If, in any proceedings, any question arises whether a person is or is not entitled to any privilege or immunity, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is conclusive evidence of that fact¹³.

1 As to the meaning of 'inspection team' see PARA 488 note 8 ante.

2 As to the meaning of 'observer' see PARA 488 note 10 ante.

3 Chemical Weapons Act 1996 s 27(1). The privileges and immunities are those in accordance with the Diplomatic Privileges Act 1964 s 2(1), Sch 1 arts 29, art 30 paras 1, 2, art 31 paras 1, 2, 3, art 34: see the Chemical Weapons Act 1996 s 27(1), (7). The Diplomatic Privileges Act 1964 Sch 1 sets out articles of the Vienna Convention on Diplomatic Relations (Vienna, 2 March to 14 April 1961; Misc 6 (1961); Cmnd 1368) having force of law in the United Kingdom. See INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

Such persons, in addition, enjoy the same privileges as are enjoyed by diplomatic agents in accordance with the Diplomatic Privileges Act 1964 Sch 1 art 36 para 1(b), except in relation to articles the importing or exporting of which is prohibited by law or controlled by the enactments relating to quarantine: Chemical Weapons Act 1996 s 27(2). 'Enactment' includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978: see STATUTES vol 44(1) (Reissue) PARA 1232): Chemical Weapons Act 1996 s 27(7).

4 'Approved equipment' and 'samples' are to be construed in accordance with the verification annex: Chemical Weapons Act 1996 s 27(7). As to the verification annex see PARA 488 note 1 ante.

- 5 Chemical Weapons Act 1996 s 27(3). As to customs duties generally see CUSTOMS AND EXCISE.
- 6 For the meaning of 'routine inspection' see PARA 488 note 1 ante.
- 7 For the meaning of 'challenge inspection' see PARA 488 note 2 ante.
- 8 For the meaning of 'assistance inspection' see PARA 488 note 3 ante.
- 9 As to the Chemical Weapons Convention see PARA 472 note 2 ante.
- 10 Chemical Weapons Act 1996 s 27(4).
- 11 In accordance with the verification annex: see the Chemical Weapons Act 1996 s 27(5).
- 12 Ibid s 27(5). As to the Secretary of State see PARA 413 note 14 ante.
- 13 Ibid s 27(6).

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491. Power to search and obtain evidence.

If a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that an offence under the Chemical Weapons Act 1996 is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them¹.

A person who enters the premises under the authority of the warrant may:

- 93 (1) take with him such other persons and such equipment as appear to him to be necessary²;
- 94 (2) inspect any document found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under the Chemical Weapons Act 1996³;
- 95 (3) take copies of, or seize and remove, any such document⁴;
- 96 (4) inspect, seize and remove any device or equipment found on the premises which he has reasonable cause to believe may be required as such evidence⁵;
- 97 (5) inspect, sample, seize and remove any substance found on the premises which he has reasonable cause to believe may be required as such evidence⁶;
- 98 (6) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any document, device, equipment or substance⁷.

The powers conferred by a warrant are only exercisable in the presence of a constable, if the warrant so provides⁸.

- 1 Chemical Weapons Act 1996 s 29(1). As to the Secretary of State see PARA 413 note 14 ante.
- 2 Ibid s 29(2)(a).

- 3 Ibid s 29(2)(b).
- 4 Ibid s 29(2)(c).
- 5 Ibid s 29(2)(d).
- 6 Ibid s 29(2)(e).
- 7 Ibid s 29(2)(f). No woman or girl may be searched except by a woman: see s 29(2).
- 8 Ibid s 29(3).

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492. Forfeiture in case of conviction.

The court by or before which a person is convicted of an offence under the Chemical Weapons Act 1996 may order that anything shown to the court's satisfaction to relate to the offence must be forfeited, and either destroyed or otherwise dealt with in such manner as the court may order¹. In particular, the court may order the thing to be dealt with as the Secretary of State may see fit; and in such a case the Secretary of State may direct that it be destroyed or otherwise dealt with². Where the court proposes to order anything to be forfeited under these provisions and a person claiming to have an interest in it applies to be heard by the court, the court may not order that thing to be forfeited unless that person has been given an opportunity to show cause why the order should not be made³.

- 1 Chemical Weapons Act 1996 s 30(1).
- 2 Ibid s 30(2). As to the Secretary of State see PARA 413 note 14 ante.
- 3 Ibid s 30(3).

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493. Offences committed by bodies corporate.

Where an offence under the Chemical Weapons Act 1996 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director¹, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly².

- 1 'Director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: Chemical Weapons Act 1996 s 31(4).
- 2 Ibid s 31(3).

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494. Disclosure of information.

Where information is obtained under, or in connection with anything done under, the Chemical Weapons Act 1996 or the Chemical Weapons Convention¹, and it relates to a particular business or other activity carried on by any person, so long as the business or activity continues to be carried on that information must not be disclosed except:

- 99 (1) with the consent of the person for the time being carrying on the business or activity;
- 100 (2) in connection with anything done for the purposes of the Chemical Weapons Convention;
- 101 (3) in connection with anything done for the purposes of the Chemical Weapons Act 1996²;
- 102 (4) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- 103 (5) in connection with the enforcement of any restriction on imports or exports;
- 104 (6) in dealing with an emergency involving danger to the public;
- 105 (7) with a view to ensuring the security of the United Kingdom; or
- 106 (8) to the International Court of Justice for the purpose of enabling that court to deal with any dispute referred to it under the Chemical Weapons Convention³.

A person who discloses information in contravention of these provisions is guilty of an offence⁴. Where, however, a person proposes to disclose information in circumstances where the disclosure would not, by virtue of heads (2) to (8) above, contravene these provisions, he may disclose the information notwithstanding any obligation not to disclose it that would otherwise apply⁵.

1 As to the Chemical Weapons Convention see PARA 472 note 2 ante.

2 The reference to the Chemical Weapons Act 1996 in head (3) in the text does not include a reference to s 33 (see PARA 495 post): s 32(3).

3 Ibid s 32(1), (2). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

4 Ibid s 32(4). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum and on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 32(4). As to the statutory maximum see PARA 475 note 9 ante. Proceedings for such an offence may not be instituted except by or with the consent of the Secretary of State: s 31(2). As to the Secretary of State see PARA 413 note 14 ante.

5 Ibid s 32(5).

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495. Miscellaneous powers and duties of the Secretary of State.

In each calendar year the Secretary of State must prepare a report on the operation of the Chemical Weapons Act 1996, and lay a copy of the report before each House of Parliament¹. Any expenses of the Secretary of State incurred in consequence of the Chemical Weapons Act 1996 must be paid out of money provided by Parliament²; and any sums received by the Secretary of State in consequence of that Act must be paid into the Consolidated Fund³.

The Secretary of State may by order⁴ make such additions to, omissions from or other modifications to the Chemical Weapons Act 1996 as he considers necessary or desirable to give effect to any amendment of the Chemical Weapons Convention⁵.

1 Chemical Weapons Act 1996 s 33. As to the Secretary of State see PARA 413 note 14 ante.

2 Ibid s 38(1).

3 Ibid s 38(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

4 The power to make an order under ibid s 36 is, if the order solely modifies s 19(2), Schedule, exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 36(2). The power to make any other order under s 36 is exercisable by statutory instrument, and no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament: s 36(3).

5 Ibid s 36(1). As to the Chemical Weapons Convention see PARA 472 note 2 ante.

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(iii) Nuclear Weapons

496. In general.

The testing, development and use of nuclear weapons are covered by a number of international treaties¹.

Since 1973, the Secretary of State² has had responsibility for explosive nuclear devices³ and since 1991 he has had the power to make arrangements with respect to the Atomic Weapons Establishment concerning the activities connected with the development, production or maintenance of nuclear devices or with research into such devices or their effects⁴.

1 See eg: (1) the Treaty banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (Moscow, 5 August 1963; TS 3 (1963); Cmnd 2245) which was ratified by the United Kingdom (and came into force) on 10 October 1963 but was not incorporated into English law; (2) the Treaty on Principles Governing the Activities of States in Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (London, Moscow and Washington, 27 January 1967; TS 10 (1968); Cmnd 3519) which was ratified by the United Kingdom (and came into force) on 10 October 1963 but was not incorporated into English law; (3) the Treaty on the Non-proliferation of Nuclear Weapons (London, Moscow and Washington, 1 July 1968; TS 88 (1970); Cmnd 4474) which was ratified by the United Kingdom on 27 and 29 November 1969 and entered into force on 5 March 1970 but was not incorporated into English law; (4) the Agreement for the Application of Safeguards in the United Kingdom in connection with the Treaty on the Non-proliferation of Nuclear Weapons (with Protocol) ('the Safeguards Agreement') (Vienna, 6 September 1976; Misc 2 (1977); Cmnd 6730) and the Additional Protocol (Vienna, 22 September 1998) which were given effect in English law by the Nuclear Safeguards and Electricity (Finance) Act 1978 and the Nuclear Safeguards Act 2000; (5) the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and the Subsoil thereof (London, Moscow and Washington, 11 February 1971; TS 13 (1973); Cmnd 5266) which

was ratified by the United Kingdom (and came into force) on 18 May 1972 but was not incorporated into English law.

As to the use or threat of use of nuclear weapons see *Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion by the General Assembly of the United Nations)* (1996) Times, 18 July, ICJ. See further FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1341.

2 As to the Secretary of State see PARA 413 note 14 ante.

3 See FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1386.

4 See FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1387.

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(iv) Landmines

497. Landmines in general.

The Landmines Act 1998 makes provision for the control of anti-personnel mines and for connected purposes. The Act implements the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction¹.

The Act applies to various types of mines and components. An 'anti-personnel mine' is a landmine which is designed to be detonated by the presence, proximity or contact of an individual, and which is capable of incapacitating, injuring or killing an individual². A 'component' of an anti-personnel mine is anything designed or adapted to form part of an anti-personnel mine³. A 'prohibited object' is an anti-personnel mine or any component of an anti-personnel mine⁴. A 'landmine' is a munition designed to be placed under, on or near the ground, or some other surface, and to be detonated by the presence, proximity or contact of an individual or vehicle⁵. A landmine is not to be taken as designed to be detonated by the presence, proximity or contact of an individual by reason only of being designed to be detonated by the presence, proximity or contact of a vehicle in or on which there would be, or might be, an individual⁶. A landmine which is designed to be detonated by the presence, proximity or contact of a vehicle, but which is equipped with an anti-handling device, is not to be taken, by reason only of being so equipped, as designed to be detonated by the presence, proximity or contact of an individual⁷. An 'anti-handling device' is a device which: (1) is part of, linked to, attached to or placed under a landmine; (2) is intended to protect the landmine from being neutralised or made less effective or from being moved; and (3) is activated when an attempt is made to tamper with the landmine or otherwise intentionally to disturb it⁸.

Subject to certain conditions⁹, the Act binds the Crown¹⁰.

1 The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction (Ottawa, 18 September 1997; Cm 3990) ('the Ottawa Convention'). The Landmines Act 1998 extends, with exceptions, adaptations or modifications, to Guernsey (see the Landmines Act 1998 (Guernsey) Order 2000, SI 2000/2769), the Isle of Man (see the Landmines Act 1998 (Isle of Man) Order 2000, SI 2000/2770), Jersey (see the Landmines Act 1998 (Jersey) Order 2001, SI 2001/3930), and Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, the Cayman Islands, the Falkland Islands, Montserrat, Pitcairn Island, St Helena and Dependencies, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, the Turks and Caicos Island and the Virgin Islands (see the Landmines Act 1998 (Overseas Territories) Order 2001, SI 2001/3499).

The Secretary of State may by order make such additions to, omissions from or other modifications of the Landmines Act 1998 as he considers necessary or desirable to give effect to any amendment of the Ottawa Convention made in pursuance of its provisions: Landmines Act 1998 s 24(1). The power to make such an order

is exercisable by statutory instrument, and no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament: s 24(2). As to the Secretary of State see PARA 413 note 14 ante. Any expenses of the Secretary of State incurred in consequence of the Landmines Act 1998 are to be paid out of money provided by Parliament: s 25(1). Any sums received by the Secretary of State in consequence of that Act are to be paid into the Consolidated Fund: s 25(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

2 Ibid ss 1(2), 27(1).

3 Ibid ss 1(3), 27(1).

4 Ibid ss 1(4), 27(1).

5 Ibid ss 1(5), 27(1). 'Vehicle' includes a vessel or hovercraft: s 27(1).

6 Ibid s 1(6).

7 Ibid s 1(7).

8 Ibid s 1(8).

9 No contravention by the Crown of a provision made by or under the Landmines Act 1998 makes the Crown criminally liable; but the High Court may, on the application of a person appearing to the court to have an interest, declare any conduct of the Crown constituting such a contravention to be unlawful: s 28(2). Notwithstanding this, the provisions made by or under the Act apply to persons in the public service of the Crown as they apply to other persons: s 28(3). Nothing in s 28 affects Her Majesty in her private capacity; and s 28(4) is to be construed as if the Crown Proceedings Act 1947 s 38(3) (meaning of Her Majesty in her private capacity: see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103) were contained in the Landmines Act 1998: s 28(4).

10 Ibid s 28(1).

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498. Offences relating to anti-personnel mines.

Subject to certain provisions¹, no person may: (1) use an anti-personnel mine²; (2) develop or produce an anti-personnel mine³; (3) participate in the acquisition⁴ of a prohibited object⁵; (4) have a prohibited object in his possession⁶; or (5) participate in the transfer⁷ of a prohibited object⁸. Subject to the same provisions, no person may assist, encourage or induce any other person to engage in any such conduct⁹. A person contravening these provisions is guilty of an offence¹⁰.

It is a defence for the accused to prove that he participated in the transfer of a prohibited object with the intention that it was to be used only for the permitted purposes¹¹ and that the transfer in question was authorised by the Secretary of State¹². The permitted purposes are: (a) the development of techniques of mine detection, mine clearance or mine destruction¹³; (b) training in techniques of mine detection, mine clearance or mine destruction; and (c) the purposes of any proceedings under the Landmines Act 1998 or of any criminal investigation or other criminal proceedings in which the object in question is or may be evidence¹⁴. It is also a defence for the accused to prove that he participated in the transfer of a prohibited object for the purpose only of enabling it to be destroyed or had such an object in his possession for the purpose only (with or without such a transfer) of securing its destruction¹⁵. It is a defence to show that a person has a prohibited object in his possession with the intention that it will be used only for purposes permitted by heads (a) to (c) above, and it is an object which the Secretary of State has authorised him to have in his possession¹⁶. It is a defence to show that a person has participated in the acquisition of a prohibited object if the acquisition that has been

made, agreed or arranged is an acquisition by means of a transfer which is permitted¹⁷, and that he has participated in that acquisition with the intention that the object will be used only for purposes permitted by heads (a) to (c) above, or for the purpose (with or without a further transfer) of enabling the object to be destroyed¹⁸. It is not an offence for a person at any time to assist, encourage or induce any conduct if, at that time, he has reasonable cause to believe that the defences set out above prevent such conduct from contravening the Landmines Act 1998¹⁹.

A person is not guilty of an offence²⁰ in respect of any conduct of his which takes place in the course of, or for the purposes of, a military operation²¹, or the planning of such an operation, and is not, and does not relate to, the laying of anti-personnel mines in contravention of the Ottawa Convention²². In proceedings for an offence under the Landmines Act 1998 in respect of any conduct, it is a defence for the accused to prove that: (i) the conduct was in the course of, or for the purposes of, a military operation or the planning of a military operation; (ii) the conduct was not the laying of an anti-personnel mine; (iii) at the time of the conduct he believed, on reasonable grounds, that the operation was or would be an operation to which the statutory provision relating to international military operations²³ applies; and (iv) he did not suspect, and had no grounds for suspecting, that the conduct related to the laying of anti-personnel mines in contravention of the Ottawa Convention²⁴.

1 le the Landmines Act 1998 ss 3-6 (s 3 as amended).

2 Ibid s 2(1)(a). For the meaning of 'anti-personnel mine' see PARA 497 ante. Section 2(1) applies to conduct in the United Kingdom or elsewhere: s 3(1). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

In proceedings for an offence under s 2(1)(a), (c), (d) or (e) relating to any object it is a defence for the accused to prove that, at the time of the conduct in question, he neither knew nor suspected, nor had reason to suspect, that it was a prohibited object: s 6(1). For the meaning of 'prohibited object' see PARA 497 ante.

3 Ibid s 2(1)(b).

4 A person participates in the acquisition of an object if: (1) he acquires the object or enters into a contract to acquire it; or (2) he makes arrangements under which another person either acquires the object or enters into a contract to acquire it: ibid s 2(3). For the purposes of the Landmines Act 1998, to acquire an object is to buy it, hire it, borrow it or accept it as a gift: s 2(6)(a). A person will not be taken to acquire or dispose of a prohibited object by reason only of his acquisition or disposal of an interest in or right over land containing one or more emplaced anti-personnel mines: s 2(7).

5 Ibid s 2(1)(c). In proceedings for an offence under s 2(1)(c), (d) or (e) relating to a component of an anti-personnel mine it is a defence for the accused to prove either: (1) that, at the time of the conduct in question, there was no proposal to use the component as part of an anti-personnel mine; or (2) that, at that time, he neither knew nor suspected, nor had reason to suspect, that there was any proposal to use the component as part of an anti-personnel mine: s 6(2). See also note 2 supra. For the meaning of 'component' see PARA 497 ante.

6 Ibid s 2(1)(d). In proceedings for an offence under s 2(1)(d) relating to any object it is a defence for the accused to prove: (1) that (having come to know or suspect while the object was in his possession that it was a prohibited object) he took all reasonable steps, as soon as reasonably practicable after he first had that knowledge or suspicion, to inform the Secretary of State, or a constable, of his knowledge or suspicion; or (2) that he did not have any knowledge or suspicion that the object was a prohibited object, nor any reason for such a suspicion, until he became aware of the Secretary of State's exercise in the case of that object of a power conferred on the Secretary of State by the Landmines Act 1998: s 6(3). See also notes 2, 5 supra. As to the Secretary of State see PARA 413 note 14 ante.

7 A person participates in the transfer of an object if: (1) he transfers the object or enters into a contract to transfer it; or (2) he makes arrangements under which another person either transfers the object or enters into a contract to transfer it: ibid s 2(4). References to transferring an object include references to disposing of the object and to delivering it to another person: s 2(5). To dispose of an object is to sell it, let it on hire, lend it or give it: s 2(6)(b). See also s 2(7); and note 4 supra.

8 Ibid s 2(1)(e). See also notes 2, 5 supra.

9 Ibid s 2(2). In proceedings for an offence under s 2(2) it is a defence for the accused to prove that, at the time when he assisted, encouraged or induced the conduct in question, he neither knew nor suspected, nor had reason to suspect, that the conduct related, or might relate, to a prohibited object: s 6(4). Section 2(2) applies to assistance, encouragement and inducements in the United Kingdom or elsewhere, and it so applies irrespective of whether the conduct assisted, encouraged or induced takes place, or (if it takes place) will take place, in the United Kingdom or elsewhere: s 3(2). The provisions of s 2(1), (2), so far as they apply to: (1) conduct outside the United Kingdom; and (2) assistance, encouragement and inducements outside the United Kingdom, impose prohibitions only on United Kingdom nationals, Scottish partnerships and bodies incorporated under the law of a part of the United Kingdom: s 3(3). Her Majesty may by Order in Council extend the application of the provisions of s 2(1), (2), so far as they apply as mentioned in s 2(3), to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony: s 3(4). See the Landmines Act 1998 (Guernsey) Order 2000, SI 2000/2769; the Landmines Act 1998 (Isle of Man) Order 2000, SI 2000/2770; and the Landmines Act 1998 (Jersey) Order 2001, SI 2001/3930. For these purposes, a United Kingdom national is an individual who is: (a) a British citizen, a British overseas territories citizen, a British national (overseas) or a British overseas citizen; (b) a person who under the British Nationality Act 1981 is a British subject; or (c) a British protected person within the meaning of that Act: Landmines Act 1998 s 3(5) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to British citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

10 Landmines Act 1998 s 2(8). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine or both: s 2(8). Proceedings for an offence under s 2 committed outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom: s 3(6).

11 Ie for the purposes set out in ibid s 4(7): see heads (a)-(c) in the text.

12 Ibid s 4(1), (2). No person is to be authorised by the Secretary of State for the purposes of s 4(2) or (4) to transfer, or to have in his possession, any prohibited objects of any description in numbers in excess of what is necessary for the purposes permitted by s 4(7) (see heads (a)-(c) in the text): s 4(8).

13 An anti-personnel mine is to be taken to be destroyed if it is permanently prevented (by dismantling or any other means) from being capable of incapacitating, killing or injuring any person; and a component of an anti-personnel mine is to be taken to be destroyed if it is permanently prevented from being used as part of an anti-personnel mine: ibid s 27(2).

14 Ibid s 4(7).

15 Ibid s 4(1), (3).

16 Ibid s 4(1), (4). See note 12 supra.

17 Ie by virtue of ibid s 4(2) or (3): see the text to notes 12, 15 supra.

18 Ibid s 4(5).

19 Ibid s 4(6).

20 The defences in ibid s 5 are expressed to apply to 'section 2 offences': s 5(2). A 'section 2 offence' is: (1) an offence under s 2; or (2) attempting or conspiring to commit an offence under that provision, or incitement to commit such an offence: s 27(1).

21 'Military operation' includes any naval or air force operation; and 'operation' includes exercises and other activities: ibid s 5(7). Section 5 applies to a military operation if: (1) it takes place wholly or mainly outside the United Kingdom; (2) it involves the participation both of members of Her Majesty's armed forces and of members of the armed forces of a state other than the United Kingdom; and (3) the operation is one in the course of which there is or may be some deployment of anti-personnel mines by members of the armed forces of one or more states that are not parties to the Ottawa Convention, but in the course of which such mines are not to be laid in contravention of that Convention: Landmines Act 1998 s 5(3). As to the Ottawa Convention see PARA 497 note 1 ante. 'Her Majesty's armed forces' means any of Her Majesty's forces, within the meaning of the Army Act 1955 (see ARMED FORCES vol 2(2) (Reissue) PARA 2); Landmines Act 1998 s 5(7). If in any proceedings any question arises whether any actual or planned military operation involved the participation of any person, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is to be conclusive evidence of that fact: s 5(4). For the purposes of s 5, the laying of anti-personnel mines is to be taken to be in contravention of the Ottawa Convention in any circumstances other than those where the mines are laid by members of the armed forces of a state that is not a party to that Convention: Landmines Act 1998 s 5(5). A state is a party to the Ottawa Convention if, under art 16, that state has ratified, accepted or approved that Convention or has acceded to it and either that Convention is in force in relation to that state or art 1 para 1 is being provisionally applied in relation to that state in accordance with art 18: Landmines Act 1998 s 5(6).

22 Ibid s 5(1).

23 le ibid s 5.

24 Ibid s 5(2).

UPDATE

498 Offences relating to anti-personnel mines

NOTE 21--Definition of 'Her Majesty's armed forces' amended: Armed Forces Act 2006 Sch 16 para 152.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/3. INTERNATIONAL AGREEMENTS AND CONVENTIONS/(4) BIOLOGICAL, CHEMICAL, NUCLEAR AND OTHER WEAPONS AND MINES/(iv) Landmines/499. Securing the destruction of anti-personnel mines.

499. Securing the destruction of anti-personnel mines.

If the Secretary of State has grounds to suspect that an object is a prohibited object¹ and it does not appear to him that the only persons in possession of that object are persons whose possession of the object is prevented from amounting to an offence², he may serve³ on any person who appears to the Secretary of State to have the object in his possession and any other person who appears to the Secretary of State to have an interest which the Secretary of State believes will be materially affected by the service of the notice⁴, a copy of a notice⁵ which:

- 107 (1) describes the object and states its location;
- 108 (2) states that the Secretary of State suspects that the object is a prohibited object and gives the reasons for his suspicion;
- 109 (3) states that he is considering whether to secure its destruction⁶;
- 110 (4) states that any person may make representations that the object is not a prohibited object or is lawfully in his possession; and
- 111 (5) states that a person on whom the notice is served and who has the object in his possession must not relinquish possession before a date specified in the notice⁷.

If the Secretary of State has reasonable cause to believe that an object is on premises⁸ to which the public has access or which are occupied by a person who consents to action being taken⁹, that the object is a prohibited object, and that the case is not one where the only persons in possession of that object are persons whose possession of the object is prevented from amounting to an offence¹⁰, the Secretary of State may authorise a person to enter the premises and to search them¹¹. If, whatever the nature of the premises concerned, a justice of the peace is satisfied, on information on oath, that there is reasonable cause to believe that there are grounds for issuing a warrant¹² in relation to any premises, he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them¹³. If a person enters premises under an authorisation or warrant and a prohibited object is found there, he may make the object safe¹⁴ and he may seize and remove it if it is reasonably practicable to do so, or he may, in any other case, affix a warning¹⁵ to the object, or in a conspicuous position to something near the object, stating that the object is not to be moved or interfered with before the date specified in the warning¹⁶.

Where an object is removed under the above provisions¹⁷, if at any time in the first six month period¹⁸, any person appears to the Secretary of State to have had the object in his possession immediately before its removal, or any other person appears to the Secretary of State to have an interest which the Secretary of State believes would be materially affected by the object's destruction, the Secretary of State must serve on that person a copy of a notice¹⁹ which:

- 112 (a) describes the object and state its location;
- 113 (b) states that the Secretary of State proposes to secure its destruction and gives the reasons for his proposal;
- 114 (c) states that the person on whom the copy of the notice is served may object to the Secretary of State's proposal; and
- 115 (d) states that an objection, if made, must be made in writing to the Secretary of State before such date as is specified in the notice and must state why the object ought not to be destroyed²⁰.

If at any time in the second six-month period²¹ the Secretary of State decides that the object ought to be destroyed, he may authorise a person to destroy it²². If an object is removed from premises and destroyed, the Secretary of State may recover from any person who had possession of the object immediately before its removal any costs reasonably incurred by the Secretary of State in connection with the removal and destruction²³. However, if: (i) an object is removed from premises; (ii) at the end of the second six-month period the Secretary of State has not authorised the destruction of the object; and (iii) a person had possession of the object immediately before its removal, the Secretary of State must return the object to that person or, if there is more than one such persons, to such of them as the Secretary of State thinks appropriate²⁴.

Where a warning is affixed to the object, or in a conspicuous position to something near the object under the above provisions²⁵, if at any time in the first six months of the warning²⁶ any person appears to the Secretary of State to have had the object in his possession immediately before the warning was affixed, or any other person appears to the Secretary of State to have an interest which the Secretary of State believes would be materially affected by the object's destruction, the Secretary of State must serve on that person a copy of a notice²⁷ which must contain the details set out in heads (a) to (d) above²⁸. If at any time in the second six months of the warning²⁹ the Secretary of State decides that the object ought to be destroyed, it may be destroyed³⁰. Where an object is destroyed the Secretary of State may recover, from any person who had possession of the object immediately before the warning was affixed, any costs reasonably incurred by the Secretary of State in connection with the destruction³¹.

If a person claims that: (A) an object has been destroyed³²; (B) he had an interest which was materially affected by the destruction; (C) he sustained loss as a result of the destruction; and (D) no copy of the appropriate notice was served on him, whether or not one was served on any other person, he may make an application to the High Court which, if it finds the claim to be justified, may order the Secretary of State to pay the person such amount, if any, by way of compensation as it considers just³³.

1 For the meaning of 'prohibited object' see PARA 497 ante. As to the Secretary of State see PARA 413 note 14 ante.

2 ie prevented from being a contravention of the Landmines Act 1998 s 2 by the provisions of s 4: see PARA 498 ante.

3 A notice under the Landmines Act 1998, or a copy of a notice, may be served on a person: (1) by delivering it to him in person; (2) by sending it by post to him at his usual or last-known residence or place of business in the United Kingdom; or (3) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it by post to the secretary or clerk of that body corporate at that office: s 26. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

4 Ibid s 7(3).

5 Ibid s 7(1).

6 Ie under ibid ss 8-10.

7 Ibid s 7(2). A person is guilty of an offence if: (1) a copy of a notice has been served on him under s 7; (2) the notice related to an object in his possession at the time the copy was served; (3) he relinquishes possession of the object before the date specified; and (4) he has no reasonable excuse for so relinquishing possession: s 12(1). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 12(4). As to the statutory maximum see PARA 475 note 9 ante. A person who knowingly makes a false or misleading statement in response to a copy of a notice served under s 7 is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 12(5).

8 'Premises' includes land (including buildings), moveable structures, vehicles and aircraft: ibid s 27(1).

9 Ie under ibid s 8.

10 See note 2 supra.

11 Landmines Act 1998 s 8(1). Section 8 applies whether or not any copy of a notice has been served under s 7: s 8(9). A person is guilty of an offence if he wilfully obstructs another in entering or searching premises or attempting to do so under an authorisation given under s 8(1): s 12(2)(a), (d). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 12(4).

12 For these purposes, there are grounds for issuing a warrant in relation to any premises if: (1) a prohibited object is on the premises; and (2) the case is not one where the only persons in possession of that object are persons whose possession of the object is prevented from being a contravention of ibid s 2 by the provisions of s 4 (see PARA 498 ante): s 8(3).

13 Ibid s 8(2). A person who acts under an authorisation or warrant under s 8(1) or (2) may take with him such other persons and such equipment as appear to him to be necessary: s 8(4). If the authorisation or warrant so provides, the powers conferred on any person by an authorisation or warrant under s 8(1) or (2) are exercisable only in the presence of a constable: s 8(8). A person is guilty of an offence if he wilfully obstructs another in entering or searching premises or attempting to do so under a warrant given under s 8(2): s 12(2)(a), (d). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 12(4).

14 For the purposes of ibid s 8(5), an object is made safe if, without being destroyed, it is prevented from being an immediate danger (by the disconnection of a detonator or otherwise): s 8(7).

15 See the text and notes 25-31 infra.

16 Landmines Act 1998 s 8(5). However, a person may not exercise the powers conferred by s 8(5) if he is satisfied: (1) that the object is in the possession of one or more persons; and (2) that that person, or each of those persons, is a person whose possession of the object is prevented from being a contravention of s 2 by the provisions of s 4 (see PARA 498 ante): s 8(6). A person is guilty of an offence if: (a) a warning relating to an object has been affixed under s 8(5); (b) he interferes with the warning or, before the date specified in the warning, moves or interferes with the object; and (c) he has no reasonable excuse for doing so: s 12(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 12(4).

17 Ie removed under ibid s 8: see the text and notes 8-16 supra.

18 The 'first six-month period' is the period of six months beginning with the day after the removal: ibid s 9(1)(a). The 'second six-month period' is the period of six months beginning with the day after the first six-month period ends: s 9(1)(b).

19 Ibid s 9(2). A person who knowingly makes a false or misleading statement in response to a copy of a notice served under s 9 is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 12(5).

20 Ibid s 9(3). For the meaning of 'destruction' see PARA 498 note 13 ante.

21 See note 18 *supra*.

22 Landmines Act 1998 s 9(4). Before he reaches a decision under s 9(4) the Secretary of State must: (1) allow any person on whom a copy of a notice has been served under s 9(2) time to respond; and (2) take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise): s 9(5). A person is guilty of an offence if he wilfully obstructs another in the destroying of an object or in the attempt to do so under an authorisation given under s 9(4): s 12(2)(c), (d). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 12(4).

23 *Ibid* s 9(6).

24 *Ibid* s 9(7).

25 *Ie* under *ibid* s 8: see the text and notes 8-16 *supra*.

26 The 'first six months of the warning' is the period of six months beginning with the day after the warning was affixed: *ibid* s 10(1)(a). The 'second six months of the warning' is the period of six months beginning with the day after the first six months of the warning ends: s 10(1)(b).

27 *Ibid* s 10(2). A person who knowingly makes a false or misleading statement in response to a copy of a notice served under s 10 is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 12(5).

28 *Ibid* s 10(3).

29 See note 26 *supra*.

30 Landmines Act 1998 s 10(4). The object must be destroyed in accordance with s 10(6)-(10): s 10(4). If: (1) at any time in the second six months of the warning the Secretary of State decides that the object should be destroyed; and (2) the object is on premises to which the public has access or which are occupied by a person who consents to action being taken under s 10(6), the Secretary of State may authorise a person to enter the premises and to destroy the object if it is found there: s 10(6). If (whatever the nature of the premises concerned) a justice of the peace is satisfied, on information on oath, that a decision of the Secretary of State for the destruction of an object provides grounds for issuing a warrant in relation to any premises, he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to destroy the object if it is found there: s 10(7). For the purposes of s 10(7), a decision of the Secretary of State for the destruction of an object provides grounds for issuing a warrant in relation to any premises if: (a) the premises are premises where a warning has been affixed under s 8 as respects any object; and (b) the Secretary of State has decided, at any time in the second six months of the warning, that the object should be destroyed: s 10(8). A person who acts under an authorisation or warrant under s 10(6) or (7) may take with him such other persons and such equipment as appear to him to be necessary: s 10(9). If the authorisation or the warrant so provides, the powers conferred on any person by an authorisation or warrant under s 10(6) or (7) are exercisable only in the presence of a constable: s 10(10). A person is guilty of an offence if he wilfully obstructs another in entering or searching premises or destroying an object or attempting to do so under an authorisation or warrant given under s 10(6) or (7): s 12(2)(a), (c), (d). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 12(4).

31 *Ibid* s 10(11). The powers conferred by ss 7-10 are in addition to, and do not affect, any power exercisable in relation to an object otherwise than by virtue of those provisions (such as power to dispose of property in police possession in connection with the investigation of a suspected offence): s 27(3).

32 *Ie* under *ibid* ss 9, 10: see the text and notes 17-31 *supra*.

33 *Ibid* s 11(1), (2). However, if the court believes that the object would have been destroyed even if a copy of a notice had been served on the person concerned, the court will not order such compensation to be paid: s 11(3).

500. Fact-finding missions.

If it is proposed that any of the functions of a fact-finding mission¹ ought to be carried out in the United Kingdom, the Secretary of State may issue an authorisation in respect of that mission². The authorisation has the effect of authorising the members of the fact-finding mission: (1) to exercise within the specified area³ such rights of access, entry and unobstructed inspection as are required for the purposes of the carrying out of the mission's functions under the Ottawa Convention; and (2) to do such other things within that area in connection with the carrying out of the mission's functions as they are entitled to do by virtue of that Convention⁴. It also authorises any constable to give such assistance⁵ as any member of the fact-finding mission may request for the purpose of facilitating the carrying out of the functions of the mission⁶. The occupier of any premises⁷ in relation to which it is proposed to exercise a right of entry in reliance on an authorisation, or a person acting on behalf of the occupier of any such premises, is entitled to require a copy of the authorisation to be shown to him by a member of the fact-finding mission⁸. The validity of an authorisation must not be called into question in any court of law at any time before the conclusion of the carrying out of the mission's functions in the United Kingdom⁹.

A person is guilty of an offence if: (a) he refuses without reasonable excuse to comply with any request made by a member of an authorised fact-finding mission¹⁰ or by a constable assisting such a mission; and (b) that request is one made for the purpose of facilitating the carrying out by that mission of its functions under the Ottawa Convention¹¹. A person is also guilty of an offence if he wilfully obstructs any member of an authorised fact-finding mission in the carrying out of the mission's functions under the Ottawa Convention¹².

Members of a fact-finding mission enjoy: (i) immunity from suit and legal process in respect of things done or omitted to be done by them in the carrying out of their functions under the Ottawa Convention; (ii) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as are accorded to a diplomatic agent¹³; and (iii) the like exemptions and privileges in respect of their personal baggage as are accorded to a diplomatic agent¹⁴.

The Secretary of State may reimburse any person in respect of expenditure incurred in connection with the carrying out of the functions of a fact-finding mission¹⁵.

1 'Fact-finding mission' means a fact-finding mission under the Ottawa Convention art 8: Landmines Act 1998 s 27(1). As to the Ottawa Convention see PARA 497 note 1 ante.

2 Landmines Act 1998 s 13(1). Such an authorisation must: (1) contain a description of the area of the United Kingdom (known as the 'specified area') in which the fact-finding mission is to carry out functions; and (2) state the names of the members of the mission: s 13(2). The Secretary of State may issue an amendment to the authorisation varying the specified area: see s 13(10). For the meaning of 'United Kingdom' see PARA 402 note 4 ante. As to the Secretary of State see PARA 413 note 14 ante.

3 See note 2 supra.

4 Landmines Act 1998 s 13(3).

5 Any constable giving such assistance may use such reasonable force as he considers necessary for the purpose: *ibid* s 13(5).

6 *Ibid* s 13(4).

7 As to the meaning of 'premises' see PARA 499 note 8 ante.

8 Landmines Act 1998 s 13(6).

9 Ibid s 13(7). Where an authorisation purports to be issued under s 13 in respect of any fact-finding mission, no proceedings (of whatever nature) may be brought at any time before the conclusion of the carrying out of the mission's functions in the United Kingdom if those proceedings would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the mission's functions: s 13(8). Moreover, if in any proceedings any question arises whether a person at any time was, or was not, a member of any fact-finding mission, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is conclusive evidence of that fact: s 13(9).

10 'Authorised fact-finding mission' means a fact-finding mission in respect of which an authorisation has been issued under ibid s 13 (see the text and notes 1-9 supra): s 14(4).

11 Ibid s 14(1). A person guilty of an offence under s 14 is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 14(3).

12 Ibid s 14(2). As to the penalty see note 11 supra.

13 Ie those accorded to a diplomatic agent in accordance with the Diplomatic Privileges Act 1964 s 2(1), Sch 1. Schedule 1 sets out articles of the Vienna Convention on Diplomatic Relations (Vienna, 2 March to 14 April 1961; Misc 6 (1961); Cmnd 1368) having force of law in the United Kingdom. See INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq.

14 Landmines Act 1998 s 15(1). The exemptions and privileges mentioned in head (iii) in the text are those in accordance with the Diplomatic Privileges Act 1964 Sch 1 art 36. The immunities, privileges and exemptions accorded to members of fact-finding missions by virtue of heads (ii) and (iii) in the text may be enjoyed by them at any time when they are in the United Kingdom either: (1) for the purpose of carrying out in the United Kingdom any of the functions of the mission; or (2) while in transit to or from a country or territory in connection with the carrying out, in that country or territory, of any of the functions of the mission: Landmines Act 1998 s 15(2). If any of the immunities, privileges or exemptions accorded to a member of a fact-finding mission under s 15 is waived in any particular case by the Secretary General of the United Nations, s 15 has effect in that case as if it did not confer that immunity, privilege or exemption on that member of the mission: s 15(3). If in any proceedings a question arises whether a person is or is not entitled to any immunity, privilege or exemption by virtue of s 15, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is conclusive evidence of that fact: s 15(4).

15 Ibid s 16.

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501. Information and records.

The Secretary of State may, by notice served¹ on any person, require him to give, in such form and within such reasonable period as is specified in the notice, such information as is described in the notice and which the Secretary of State has reasonable cause to believe is or will be needed in connection with anything to be done for the purposes of the Ottawa Convention², and the information required by a notice may relate to a state of affairs subsisting before the coming into force of the Landmines Act 1998³ or of the Ottawa Convention⁴. The Secretary of State may also, by notice served on any person, require him to keep such records as are specified in the notice and which the Secretary of State has reasonable cause to believe will facilitate the giving of information which that person may at any time be required to give⁵. A person who without reasonable excuse fails to comply with a notice served on him⁶ is guilty of an offence⁷. A person on whom a notice is served⁸ and who knowingly makes a false or misleading statement in response to it is also guilty of an offence⁹.

If a justice of the peace is satisfied, on information on oath, that there are grounds¹⁰ for issuing a warrant in relation to any premises¹¹, he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them¹². A person who enters any premises under the authority of such a warrant may: (1) take

with him such other persons and such equipment as appear to him to be necessary; (2) inspect any document found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under the Landmines Act 1998; (3) take copies of, or seize and remove, any such document; (4) inspect, seize and remove any device or equipment found on the premises which he has reasonable cause to believe may be required as such evidence; (5) inspect, sample, seize and remove any substance found on the premises which he has reasonable cause to believe may be required as such evidence¹³. A constable who enters the premises either under the authority of the warrant or by virtue of head (1) above may search any person, not being a person of the opposite sex, found on the premises whom he has reasonable cause to believe to be in possession of any document, device, equipment or substance which may be required as evidence for the purposes of proceedings in respect of an offence under the Landmines Act 1998¹⁴. A person is guilty of an offence if he wilfully obstructs another in the exercise of any power conferred by a warrant under these provisions¹⁵.

If information was obtained under, or in connection with anything done under, the Landmines Act 1998 or the Ottawa Convention which relates to a particular business or other activity carried on by any person¹⁶, then, so long as the business or activity continues to be carried on, the information may not be disclosed except: (a) with the consent of the person for the time being carrying on the business or activity; (b) in connection with anything done for the purposes of the Ottawa Convention; (c) in connection with anything done for the purposes of the Landmines Act 1998; (d) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings; (e) in connection with the enforcement of any restriction on imports or exports; or (f) with a view to ensuring the security of the United Kingdom¹⁷. A person who discloses information in contravention of these provisions is guilty of an offence¹⁸.

1 As to the service of notices see PARA 499 note 3 ante. As to the Secretary of State see PARA 413 note 14 ante.

2 As to the Ottawa Convention see PARA 497 note 1 ante.

3 The Landmines Act 1998 came into force on 1 March 1999: see the Landmines Act 1998 (Commencement) Order 1999, SI 1999/448.

4 Landmines Act 1998 s 17(1). As to the date of entry into force of the Ottawa Convention see art 17.

5 Landmines Act 1998 s 17(2).

6 *Ie* under *ibid* s 17(1), (2).

7 *Ibid* s 17(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 17(3). As to the statutory maximum see PARA 475 note 9 ante.

8 *Ie* under *ibid* s 17(1).

9 *Ibid* s 17(4). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 17(4).

10 There are grounds for issuing a warrant in relation to any premises (see note 11 *infra*) if there are reasonable grounds for suspecting: (1) that an offence under the Landmines Act 1998 is being, has been or is about to be committed on the premises or that evidence of the commission of such an offence is to be found on the premises: s 18(2).

11 As to the meaning of 'premises' see PARA 499 note 8 ante.

12 Landmines Act 1998 s 18(1).

13 *Ibid* s 18(3).

14 Ibid s 18(4), (5). If a warrant under s 18 so provides, a person (other than a constable) who exercises the powers conferred by the warrant may do so only in the presence of a constable: s 18(6).

15 Ibid s 18(7). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine: s 18(8).

16 Ibid s 19(1).

17 Ibid s 19(2). A disclosure of any information to which s 19 applies may be made in circumstances in which any of heads (b)-(f) in the text prevents there from being a contravention of s 19 notwithstanding any obligation not to disclose it that would otherwise apply: s 19(4). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

18 Ibid s 19(3). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 19(3).

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502. Criminal proceedings.

Proceedings for an offence relating to anti-personnel mines¹ may not be instituted in England and Wales, except by or with the consent of the Attorney General². Subject to this, proceedings for such an offence may be instituted by the Director of Revenue and Customs Prosecutions or by order of the Commissioners for Her Majesty's Revenue and Customs if it appears to them that the offence has involved either: (1) the movement of a prohibited object³ into or out of any country or territory; or (2) any proposal or attempt to move a prohibited object into or out of any country or territory⁴. Any proceedings so instituted by order of the Commissioners must be commenced in the name of an officer of Her Majesty's Revenue and Customs⁵. Where the Commissioners investigate, or propose to investigate, any matter with a view to determining whether there are grounds for believing that an offence relating to anti-personnel mines has been committed, or whether a person ought to be prosecuted for such an offence, that matter must be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979⁶.

The court by or before which a person is convicted of an offence under the Landmines Act 1998 may order that anything shown to the court's satisfaction to relate to the offence must be forfeited and either destroyed or otherwise dealt with in such manner as the court may order⁷. In particular, the court may order that the thing is to be dealt with as the Secretary of State may see fit and, in such a case, the powers of the Secretary of State include the power to direct the destruction of that thing or to secure its disposal in any other way that appears to him to be appropriate⁸. Where the court proposes to order anything to be so forfeited, and a person claiming to have an interest in it applies to be heard by the court, the court must not order it to be forfeited unless that person has been given an opportunity to show cause why the order ought not to be made⁹.

Where an offence under the Landmines Act 1998 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of that offence and is liable to be proceeded against and punished accordingly¹⁰.

- 1 le a 'section 2 offence': see PARA 498 note 20 ante. For the meaning of 'anti-personnel mine' see PARA 497 ante.
- 2 Landmines Act 1998 s 20.
- 3 For the meaning of 'prohibited object' see PARA 497 ante.
- 4 Landmines Act 1998 s 21(1) (s 21(1), (2), (4), (5) amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 para 66). As to the Commissioners for Her Majesty's Revenue and Customs and the transfer to those Commissioners of the functions of the former Commissioners of Customs and Excise see PARA 415 note 6 ante.
- 5 Landmines Act 1998 s 21(2) (as amended: see note 4 supra).
- 6 Ibid s 21(4) (as amended: see note 4 supra). As to the meaning of an 'assigned matter' see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 904. Nothing in s 21 (as amended) may be taken: (1) to prevent any person (including any officer) who has power to arrest, detain or prosecute any person for a section 2 offence from doing so; or (2) to prevent a court from proceeding to deal with a person brought before it following his arrest by an officer for a section 2 offence, even though the proceedings have not been instituted in accordance with s 21: s 21(5) (as so amended).
- 7 Ibid s 22(1). As to the meaning of 'destruction' for these purposes see s 27(2); and PARA 498 note 13 ante.
- 8 Ibid s 22(2). As to the Secretary of State see PARA 413 note 14 ante.
- 9 Ibid s 22(3).
- 10 Ibid s 23(1). For this purpose, 'director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: s 23(2).

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(v) Weapons Inspections

503. Arms control and disarmament.

Where a request to conduct a challenge inspection¹ within a specified area in the United Kingdom² has been made and granted by Her Majesty's government, the Secretary of State may issue an authorisation in respect of that inspection³. An authorisation must contain a description of the area to be inspected and state the names of the members of the inspection team by whom the inspection is to be carried out⁴. Such an authorisation has the effect of authorising the inspection team to exercise within the specified area rights of access, entry and unobstructed inspection⁵ and to do other things within that area in connection with the conduct of the inspection⁶. Such an authorisation also has the effect of authorising an escort team to accompany the inspection team⁷ at all times, and authorising any constable to give such assistance as the person in command of the escort team may request for the purpose of facilitating the conduct of the inspection⁸. The name of the person in command of the escort team must be stated in the authorisation⁹. The occupier of any premises in relation to which it is proposed to exercise a right of entry in reliance on an authorisation, or on which an inspection is being carried out in reliance on such an authorisation, or a person acting on behalf of the occupier of any such premises, is entitled to require a copy of the authorisation to be shown to him by a member of the escort team¹⁰. The validity of any authorisation purporting to be issued in respect of any challenge inspection may not be called in question in any court of law at any time before the conclusion of that inspection; and, accordingly, no proceedings (of whatever nature) may be brought at any time before the conclusion of any challenge inspection if they would, if successful, have the effect of preventing, delaying or otherwise

affecting the carrying out of any such inspection¹¹. If in any proceedings any question arises whether a person at any time was or was not, in relation to any challenge inspection, a member of the inspection team or (as the case may be) a member of the escort team, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is conclusive evidence of that fact¹².

Where an authorisation has been issued in respect of any challenge inspection, any person who: (1) refuses to comply with any request made by any constable for the purpose of facilitating the conduct of that inspection; or (2) wilfully obstructs any member of the inspection team or of the escort team in the conduct of that inspection, is guilty of an offence¹³.

Inspectors and transport crew members¹⁴ enjoy certain of the privileges and immunities enjoyed by diplomatic agents¹⁵. The privileges and immunities accorded to inspectors and transport crew members may be enjoyed by them at any time when they are in the United Kingdom in connection with the carrying out of an inspection there, or while in transit to or from the territory of another state party in connection with the carrying out of such an inspection there, and may also be enjoyed by them at any time with respect to acts previously performed in the exercise of official functions as an inspector or a transport crew member¹⁶. The immunity from jurisdiction enjoyed by an inspector or a transport crew member ceases to be so enjoyed if expressly waived by the state party of which he is a national¹⁷. Any means of transport used by inspectors to travel to or from the United Kingdom in connection with the carrying out of an inspection (whether in the United Kingdom or elsewhere), and specifically provided for such use by, or by arrangement with, any state party, is inviolable¹⁸. If in any proceedings any question arises whether a person is or is not entitled to any privilege or immunity, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is conclusive evidence of that fact¹⁹.

1 I.e. an inspection conducted pursuant to Section VIII of the Protocol on Inspection incorporated in the Treaty on Conventional Armed Forces in Europe (Paris, 19 November 1990): Arms Control and Disarmament (Inspections) Act 1991 s 1(1), (2)(a). As from a day to be appointed, s 1(1) is substituted, and s 1(2)(a) is repealed, by the Arms Control and Disarmament (Inspections) Act 2003 s 1, Sch 1 paras 1, 2, Sch 2. At the date at which this volume states the law no day had been appointed. Certain of the provisions of the Protocol are set out in the Arms Control and Disarmament (Inspections) Act 1991 s 1(4), Schedule (prospectively repealed by the Arms Control and Disarmament (Inspections) Act 2003 Sch 2).

The Arms Control and Disarmament (Inspections) Act 2003 brings into effect the amendments made to the Treaty on Conventional Armed Forces in Europe by the Agreement adapting that Treaty (Istanbul, 19 November 1999) and the Protocol on Inspection incorporated in the Treaty (as substituted by art 27 of that Agreement): see the Arms Control and Disarmament (Inspections) Act 1991 s 1(1) (prospectively substituted by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 2).

Her Majesty may by Order in Council make such provision modifying the Arms Control and Disarmament (Inspections) Act 1991 as appears to Her Majesty necessary or expedient for giving effect to further amendments relating to inspections made to the Treaty on Conventional Armed Forces in Europe: Arms Control and Disarmament (Inspections) Act 2003 s 2(1) (not yet in force). An Order in Council may not be made unless a draft of the Order has been laid before, and approved by resolution of, each House of Parliament: s 2(2) (not yet in force).

Her Majesty may by Order in Council provide for the Arms Control and Disarmament (Inspections) Act 1991 to extend to the Isle of Man, any of the Channel Islands, Gibraltar or the Sovereign Base Areas of Akrotiri and Dhekelia, with such modifications as appear to Her Majesty to be appropriate: s 6(4). In exercise of this power the following orders have been made: the Arms Control and Disarmament (Inspections) (Sovereign Base Areas of Akrotiri and Dhekelia) Order 1991, SI 1991/2290; the Arms Control and Disarmament (Inspections) Act 1991 (Guernsey) Order 1991, SI 1991/2625; the Arms Control and Disarmament (Inspections) Act 1991 (Isle of Man) Order 1991, SI 1991/2626; and the Arms Control and Disarmament (Inspections) Act 1991 (Jersey) Order 1991, SI 1991/2627.

2 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

3 Arms Control and Disarmament (Inspections) Act 1991 s 2(1) (prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 4 (see note 1 supra)). As from a day to be appointed, the Secretary of State may also issue an authorisation in respect of an inspection which it is proposed to conduct pursuant to Section VII of the Protocol (declared site inspections) or Section IX of the Protocol

(inspections in a designated area): Arms Control and Disarmament (Inspections) Act 1991 s 2(1A) (prospectively added by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 4 (see note 1 supra)). As to the Secretary of State see PARA 413 note 14 ante.

4 Arms Control and Disarmament (Inspections) Act 1991 s 2(2) (prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 4 (see note 1 supra)). The powers exercisable in the case of any authorisation by virtue of the Arms Control and Disarmament (Inspections) Act 1991 s 2 (prospectively amended) are exercisable in relation to any Crown land only to the extent that it is land which any person is entitled to occupy by virtue of a private interest (whether it is an interest in land or arises under a licence): s 4(1). 'Crown land' means land in which there is a Crown interest or a Duchy interest; and 'private interest' means an interest which is neither a Crown interest nor a Duchy interest: s 4(2). For this purpose, 'Crown interest' means an interest: (1) belonging to Her Majesty in right of the Crown (including the Crown in right of Her Majesty's government in Northern Ireland); or (2) belonging to a government department or Northern Ireland department, or an interest held in trust for Her Majesty for the purposes of any such department; and 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall: s 4(2). See further CROWN PROPERTY.

5 le such rights as are conferred by Section VI of the Protocol.

6 Arms Control and Disarmament (Inspections) Act 1991 s 2(3) (prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 4 (see note 1 supra)). The inspection team may do such other things as it is entitled to do under Section VI of the Protocol. Where the inspection team is divided into sub-teams, the Arms Control and Disarmament (Inspections) Act 1991 s 2(3) applies to each of the sub-teams as it applies to the inspection team as a whole: s 2(5)(a) (s 2(5) prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 4 (see note 1 supra)).

7 'Escort team' and 'inspection team' are to be construed in accordance with Section I of the Protocol: Arms Control and Disarmament (Inspections) Act 1991 s 1(2)(c) (prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 2 (see note 1 supra)). Any reference to an escort team includes a reference to an escort team in which any liaison officer is included pursuant to Section V para 2 of the Protocol (procedures upon arrival at point of entry and exit); and any reference to an inspection team includes a reference to an inspection team in which any inspector is included pursuant to Section VI of the Protocol (general rules for conducting inspections): Arms Control and Disarmament (Inspections) Act 1991 s 1(3) (prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 2, Sch 2 (see note 1 supra)).

8 Arms Control and Disarmament (Inspections) Act 1991 s 2(4)(a), (b). Where the inspection team is divided into sub-teams, s 2(4)(a) is to be construed as authorising members of the escort team to accompany each of the sub-teams: s 2(5)(b) (prospectively amended: see note 6 supra). Any constable giving assistance in accordance with s 2(4)(b) may use such reasonable force as he considers necessary for the purpose mentioned in that provision: s 2(6).

9 Ibid s 2(4).

10 Ibid s 2(7).

11 Ibid s 2(8) (prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 4, Sch 2 (see note 1 supra)).

12 Arms Control and Disarmament (Inspections) Act 1991 s 2(9) (prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 4, Sch 2 (see note 1 supra)).

13 Arms Control and Disarmament (Inspections) Act 1991 s 3(1) (prospectively amended by the Arms Control and Disarmament (Inspections) Act 2003 Sch 1 paras 1, 5, Sch 2 (see note 1 supra)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Arms Control and Disarmament (Inspections) Act 1991 s 3(1). Where an offence is committed by a body corporate and is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly: s 3(2). In relation to a body corporate whose affairs are managed by its members, 'director' means a member of the body corporate: s 3(2). As to the standard scale see PARA 432 note 21 ante.

14 'Inspector' and 'transport crew member' have the meanings given by Section I of the Protocol: Arms Control and Disarmament (Inspections) Act 1991 ss 1(2)(b), 5(7).

15 Ibid s 5(1). The privileges and immunities are those in accordance with the Diplomatic Privileges Act 1964 s 2(1), Sch 1 art 29, art 30 para 2, art 31 paras 1, 2, 3, art 34, and art 35: Arms Control and Disarmament (Inspections) Act 1991 s 5(1)(a)-(d). The Diplomatic Privileges Act 1964 Sch 1 sets out articles of the Vienna

Convention on Diplomatic Relations (Vienna, 2 March to 14 April 1961; Misc 6 (1961); Cmnd 1368) having force of law in the United Kingdom. See INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq.

Such persons also enjoy the same privileges as are enjoyed by diplomatic agents in accordance with the Diplomatic Privileges Act 1964 Sch 1 art 36 para 1(b), except in relation to articles the importing or exporting of which is prohibited by law or controlled by the enactments relating to quarantine: Arms Control and Disarmament (Inspections) Act 1991 s 5(2). 'Enactment' includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978: see STATUTES vol 44(1) (Reissue) PARA 1232): Arms Control and Disarmament (Inspections) Act 1991 s 5(7).

16 Ibid s 5(3).

17 Ibid s 5(4).

18 Ibid s 5(5).

19 Ibid s 5(6).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(1) IN GENERAL/504. Emergency powers.

4. WARTIME EMERGENCY LEGISLATION

(1) IN GENERAL

504. Emergency powers.

Provision is made for the making of laws by the Crown in time of national emergency, a state which includes, but is not limited to, war¹. These powers are discussed elsewhere in this work².

1 For the meaning of 'emergency' see the Civil Contingencies Act 2004 s 19; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to civil protection see Pt I (ss 1-18) (as amended); and PARA 539 et seq post.

2 See ibid Pt II (ss 19-31); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 820-822.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(1) IN GENERAL/505. Primary and subordinate legislation.

505. Primary and subordinate legislation.

In anticipation of the outbreak of war in 1939 it was found necessary to augment the emergency powers vested in the Crown by virtue of the prerogative created and limited by the common law or by the exercise of the statutory power to issue proclamations of emergency and by Order in Council to make emergency regulations¹. This augmentation was effected by the passing on 24 August 1939 of the Emergency Powers (Defence) Act 1939². That Act, which was originally limited to remain in force for one year from its passing³ but which was continued in force throughout the 1939-45 war and for some time after hostilities had ceased⁴, empowered the Crown by Order in Council to make defence regulations for the purpose of securing the public safety, the defence of the realm, the maintenance of public order, the efficient prosecution of any war in which the Crown might be engaged and the maintenance of essential supplies and services, and authorised the recovery of charges in connection with any scheme of control under such regulations. In the absence of contrary intention, defence regulations had certain limited extra-territorial force⁵, while the Emergency Powers (Defence)

Act 1939 itself could be extended by Order in Council to the Channel Islands, the Isle of Man and certain overseas territories⁶.

Pursuant to that Act, a considerable body of defence regulations having the force of statute⁷ was made. Many of those regulations authorised the making by specified ministers, authorities or other persons of orders, directions, licences or other instruments. If duly signed by or on behalf of the relevant minister, authority or person all such instruments⁸ were receivable in evidence and until the contrary was proved were deemed to be made or issued by that minister, authority or person, and prima facie evidence of the instrument might be given by production of a certified copy⁹.

It is not open to the court to investigate the necessity or expediency of any defence regulation¹⁰, and it is bound to assume that an order made under a defence regulation was necessary¹¹. Neither can the court interfere with the decision of a minister admittedly made in good faith within the authority delegated to him by defence regulations¹². No act done for the purpose of safeguarding national security will be rendered unlawful by the provisions¹³ prohibiting discrimination in certain fields enacted by the Race Relations Act 1976¹⁴. However, the court will not hesitate to declare a defence regulation ultra vires if such is the case¹⁵, and will investigate whether a person to whom a competent authority has properly delegated powers under defence regulations has acted in excess of the powers delegated or of the powers contained in the regulation¹⁶.

The British government has not made any formal declaration of war¹⁷ after 1945 (although it has been involved in international armed conflict since that date), and consequently no wartime emergency legislation has been made since that time.

1 As to executive powers in emergencies see PARA 504 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 820-822. As to the royal prerogative in time of war see PARAS 410-411 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 811. As to the royal prerogative generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq. As to the making of war and peace see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 809-819.

2 The Emergency Powers (Defence) Act 1939 repealed) fell into the class of statutes which, having been passed for the defence of the realm, will not, it has been said, be construed with the scrupulous nicety of eg a taxing Act: see *Norman v Mathews* (1916) 32 TLR 303 at 304, DC; affd 32 TLR 369, CA.

3 See the Emergency Powers (Defence) Act 1939 s 11(1) (as originally enacted). The duration of the Act was extended to two years by the Emergency Powers (Defence) Act 1940 s 1(3) (repealed).

4 On an address by both Houses of Parliament praying that the Emergency Powers (Defence) Act 1939 should be continued in force, the Crown was empowered to extend its operation by Order in Council for yearly periods: see s 11(1) proviso (as originally enacted). By means of such orders the Act was continued in force until 23 August 1945. However, before that date was reached, provision was made for the Act to continue in force for a further period of six months commencing with 24 August 1945 and to expire at the end of that period: see s 11(1) (substituted by the Emergency Powers (Defence) Act 1945 s 1). Although the Emergency Powers (Defence) Act 1939 s 11(1) (as substituted), contained a proviso, as formerly, giving power to continue the Act by Order in Council for further yearly periods, the power was never exercised and consequently the Act expired on 24 February 1946, and on the expiry of the Act the power to make defence regulations also ceased. The Emergency Powers (Defence) Act 1939 was formally repealed by the Emergency Laws (Repeal) Act 1959 s 10(3)(a), Sch 4 Pt I (itself now repealed).

5 See the Emergency Powers (Defence) Act 1939 s 3 (repealed), which was replaced (with modifications) by the Emergency Laws (Repeal) Act 1959 Sch 3 paras 2, 3 (repealed). Provision was also made for the extra-territorial operation of the defence legislation of certain Commonwealth countries: see the Emergency Powers (Defence) Act 1939 s 5 (repealed).

6 See *ibid* s 4 (repealed).

7 See *Ernest v Metropolitan Police Comr* (1919) 89 LJB 42, DC, where it was held that regulations under the Defence of the Realm Consolidation Act 1914 might take away a statutory privilege or impose a statutory duty. Certain defence regulations effected temporary amendments to statutes, and in many cases the amendments have been made permanent by subsequent legislation.

8 See eg *Carlish v East Ham Corpn and Edwards* [1948] 2 KB 380, [1948] 2 All ER 550; *Lewisham Metropolitan Borough and Town Clerk v Roberts* [1949] 2 KB 608, [1949] 1 All ER 815, CA.

9 See the Emergency Powers (Defence) Act 1939 s 7 (repealed), which was replaced in almost identical terms by the Emergency Laws (Repeal) Act 1959 s 2, Sch 3 para 4 (repealed). As to the admissibility of certified copies of public documents see CIVIL PROCEDURE vol 11 (2009) PARA 884.

10 *R v Comptroller-General of Patents, ex p Bayer Products Ltd* [1941] 2 KB 306, [1941] 2 All ER 677, CA. See also *Ex p Norman* (1915) 85 LJBK 203, DC.

11 *Progressive Supply Co Ltd v Dalton* [1943] Ch 54, [1942] 2 All ER 646.

12 *Point of Ayr Collieries Ltd v Lloyd-George* [1943] 2 All ER 546, CA. See also ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 31.

13 Ie the provisions of the Race Relations Act 1976 Pts II-IV (ss 4-33) (as amended): see DISCRIMINATION vol 13 (2007 Reissue) PARAS 446-480.

14 Ibid s 42 (amended by the Race Relations (Amendment) Act 2000 s 7(1)).

15 *EH Jones (Machine Tools) Ltd v Farrell and Muirsmith* [1940] 3 All ER 608; cf *Chester v Bateson* [1920] 1 KB 829, DC. See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 6.

16 *John Fowler & Co (Leeds) Ltd v Duncan* [1941] Ch 450, [1941] 2 All ER 577. An authority to delegate powers may imply power to delegate the performance of any condition necessary for the exercise of the power: *Mungoni v A-G of Northern Rhodesia* [1960] AC 336, [1960] 1 All ER 446, PC.

17 Where an enactment uses the term 'war' it may provide that this is to be interpreted as including 'armed conflict': see eg the Civil Contingencies Act 2004 ss 18(1), 31(1); para 540 note 7 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. Cf, however, the common law position described in *Amin v Brown* [2005] EWHC 1670 (Ch).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(1) IN GENERAL/506. Scope of defence regulations.

506. Scope of defence regulations.

Defence regulations gave far-reaching powers of control over the freedom of the individual and over trade and industry generally. The Defence (General) Regulations 1939¹ included provisions for the security of the state, the maintenance of public safety and order, the control of employment, industry, commerce, supplies and internal trading, and conferred extensive powers of taking possession of land and other property.

In addition to the general regulations, separate codes of defence regulations (most of which have expired, lapsed or been revoked) controlled specific matters such as agriculture², building societies³, companies⁴, exports⁵, financial dealings⁶, patents, designs and trade marks⁷ and trading with the enemy⁸.

1 Ie the Defence (General) Regulations 1939, SR & O 1939/927 (spent). These regulations were amended by numerous subsequent orders. Information regarding amendments to the defence regulations may be obtained from successive editions of the official volume of defence regulations, prepared in the Office of the Parliamentary Counsel to the Treasury, and published from time to time; the last edition (ie the 23rd edition) was published by Her Majesty's Stationery Office in February 1957.

2 See the Defence (Agriculture and Fisheries) Regulations 1939, SR & O 1939/1303 (expired).

3 See the Defence (Building Societies) Regulations 1940, SR & O 1940/1137 (expired).

4 See the Defence (Companies) Regulations 1940, SR & O 1940/1213 (expired).

5 See the Defence (Encouragement of Exports) Regulations 1940, SR & O 1940/1210 (revoked).

6 See the Defence (Finance) Regulations 1939, which were originally contained in the Order in Council dated 25 August 1939, SR & O 1939/950 (revoked), but were subsequently set out in amended form in the Defence (Finance) Regulations Amendment (No 2) Order 1939, SR & O 1939/1620 (spent).

7 See the Defence (Patents, Trade Marks, etc) Regulations 1941, SR & O 1941/1780 (revoked).

8 See the Defence (Trading with the Enemy) Regulations 1940, SR & O 1940/1092 (revoked). These regulations were given permanent effect by the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 (as amended). As to trading with the enemy see PARA 576 et seq post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(1) IN GENERAL/507. Continuance in force of defence regulations.

507. Continuance in force of defence regulations.

On the expiration of the power to make defence regulations under the Emergency Powers (Defence) Act 1939¹, all defence regulations made under that Act would have expired automatically if provision had not been made for the continuance in force of such of them as it was thought necessary to retain. This was effected by the Supplies and Services (Transitional Powers) Act 1945 and the Emergency Laws (Transitional Provisions) Act 1946. The great majority of the remaining defence regulations were repealed by the Emergency Laws (Re-enactments and Repeals) Act 1964², although certain powers conferred by regulations have been enacted permanently and others are continued temporarily.

It is clear that fresh emergency powers may be created by Parliament at any time as may be deemed necessary³. However, regulations which are in any case permanent cover the employment of the armed forces on civilian work of national importance⁴, the power to control the prices of goods and services⁵, and the power to control certain transactions ordered by governments or persons abroad in relation to currency, gold and securities⁶.

1 The power to make defence regulations under the Emergency Powers (Defence) Act 1939 expired on 24 February 1946: see PARA 505 note 4 ante.

2 See the Emergency Laws (Re-enactments and Repeals) Act 1964 s 22(2), Sch 2 (repealed).

3 As to the sovereignty of Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 232 et seq.

4 See the Emergency Powers Act 1964 s 2.

5 See the Emergency Laws (Re-enactments and Repeals) Act 1964 s 1 (amended by the Consumer Credit Act 1974 s 192, Sch 4 Pt I para 23, Sch 5); the Emergency Laws (Re-enactments and Repeals) Act 1964 ss 4, 6, 22(3) (all repealed); and the National Health Service Act 1977 s 57 (repealed).

6 See the Emergency Laws (Re-enactments and Repeals) Act 1964 s 2 (repealed). See also the Control of Gold, Securities, Payments and Credits (Kuwait) Directions 1990, SI 1990/1591 (revoked); the Control of Gold, Securities, Payments and Credits (Republic of Iraq) Directions 1990, SI 1990/1616 (revoked); the Control of Gold, Securities, Payments and Credits (Kuwait) (Revocation) Directions 1991, SI 1991/629; the Control of Gold, Securities, Payments and Credits (Serbia and Montenegro) Directions 1992, SI 1992/1265 (revoked); and the Control of Gold, Securities, Payments and Credits (Serbia and Montenegro) (Revocation) Directions 1992, SI 1992/1381. As to the application of the Control of Gold, Securities, Payments and Credits (Republic of Iraq) Directions 1990, SI 1990/1616 (revoked) see *Al-Kishtaini v Shanshal* [2001] EWCA Civ 264, [2001] 2 All ER (Comm) 601. See also PARA 586 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(i) The Compensation (Defence) Act 1939/508. In general.

(2) COMPENSATION FOR REQUISITION ETC

(i) The Compensation (Defence) Act 1939

508. In general.

The 1939-45 war legislation giving rights to compensation for the exercise of emergency powers¹ during the period of the emergency² dealt separately with compensation: (1) for the requisition³ of land⁴; (2) in respect of the doing of work on land⁵; (3) in respect of the requisition or acquisition of vessels, vehicles and aircraft⁶; (4) in respect of the taking of space or accommodation in ships and aircraft⁷; and (5) in respect of the requisition or acquisition of other goods⁸. These provisions remain unrepealed. They were applicable to acts done in exercise of emergency powers, but the relevant powers conferred by defence regulations have now all either expired or been revoked⁹. However, there are certain provisions still in force concerning compensation in relation to property other than land arising under emergency legislation, but they are limited to compensation in respect of acts done under the prerogative¹⁰ and under statutory powers concerned with the control of aviation¹¹ and of telegraphic transmission of messages¹².

Whenever it appears to the Secretary of State that the public interest so requires he may bring into operation in the United Kingdom¹³ provisions giving a general or field officer commanding any part of the regular forces the power to: (a) issue a billeting requisition to any chief officer of police; and (b) requisition such vehicles as may be specified in the requisitioning order¹⁴. Payment is to be made for requisitioned billets and vehicles¹⁵. In time of war, whether actual or imminent, or of great national emergency, the Secretary of State may provide for the taking of possession of any aircraft, aerodrome, machinery, plant or material or require that the whole or any part of the undertaking of any British air transport business be placed at his disposal¹⁶.

1 'Emergency powers' means any power conferred by: (1) regulations made under the Emergency Powers (Defence) Act 1939, as part of the law of the United Kingdom (see PARA 505 ante); (2) the Air Navigation Act 1920 s 7 (repealed); or (3) any power exercisable by virtue of the prerogative of the Crown: Compensation (Defence) Act 1939 s 17(1) (amended by the Statute Law (Repeals) Act 1973; and by the Statute Law (Repeals) Act 1976). 'Exercise' includes purported exercise: Compensation (Defence) Act 1939 s 17(1). As to the royal prerogative in time of war see PARAS 410-411 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 811. As to the royal prerogative generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

2 The period began on 24 August 1939 and continues until the emergency is declared by Order in Council to be at an end: *ibid* s 1(1). At the date at which this volume states the law, no such Order in Council had been made.

3 'Requisition' means, in relation to any property, taking possession of the property or requiring the property to be placed at the disposal of the requisitioning authority: *ibid* s 17(1).

4 See *ibid* ss 1(1)(a), 2 (as amended); and PARA 509 post. 'Land' includes (without prejudice to any of the provisions of the Interpretation Act 1978 s 22(1), Sch 2 Pt I para 5(b): see STATUTES vol 44(1) (Reissue) PARA 1383) land covered with water, and parts of houses or buildings: Compensation (Defence) Act 1939 s 17(1); Interpretation Act 1978 s 17(2)(a).

5 See the Compensation (Defence) Act 1939 s 3; and PARA 510 post.

6 See *ibid* s 4 (as amended); and PARA 511 post.

7 See *ibid* s 5; and PARA 512 post.

- 8 See *ibid* s 6; and PARA 513 post.
- 9 As to defence regulations generally see PARA 505 et seq ante.
- 10 See note 1 *supra*.
- 11 See the Compensation (Defence) Act 1939 s 17(1) (as amended: see note 1 *supra*).
- 12 See *ibid* s 17(1) (as amended: see note 1 *supra*).
- 13 For the meaning of 'United Kingdom' see PARA 402 note 4 ante. As to the Secretary of State see PARA 413 note 14 ante.
- 14 See the Army Act 1955 ss 154, 165, 174. As to the requisitioning of aircraft see the Air Force Act 1955 s 172. See ARMED FORCES vol 2(2) (Reissue) PARA 125 et seq.
- 15 See the Army Act 1955 s 158 (as amended), s 168, Sch 4 (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 126 et seq.
- 16 See the Transport Act 2000 s 93(1)(a); para 537 post; and AIR LAW vol 2 (2008) PARA 44.

UPDATE

508 In general

NOTES 14, 15--Army Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(i) The Compensation (Defence) Act 1939/509. Compensation in respect of taking possession of land; rental compensation.

509. Compensation in respect of taking possession of land; rental compensation.

The compensation payable in respect of the taking possession of any land¹ is the aggregate of the following sums:

- 116 (1) a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the land, during the period for which possession of the land is retained in the exercise of emergency powers², under a lease granted immediately before the beginning of that period, whereby the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent³; and
- 117 (2) a sum equal to the cost of making good any damage to the land which may have occurred during the period for which possession is so retained (except in so far as the damage has been made good during that period by a person acting on behalf of the Crown), no account being taken of fair wear and tear⁴ or of damage caused by war operations⁵; and
- 118 (3) in a case where the land is agricultural land⁶, a sum equal to the amount (if any) which might reasonably have been expected to be payable in addition to rent by an incoming tenant, in respect of things previously done for the purpose of the cultivation of the land, and in respect of seeds, tillages, growing crops and other similar matters, under a lease of the land granted immediately before possession was taken of it in the exercise of emergency powers⁷; and

- 119 (4) a sum equal to the amount of any expenses reasonably incurred otherwise than on behalf of the Crown, for the purpose of compliance with any directions given on behalf of the Crown in connection with the taking possession of the land⁸.

In relation to rental compensation⁹ in respect of the taking possession of land¹⁰, the above provisions¹¹ have effect, as respects any period after 19 February 1948¹², subject to certain conditions¹³. Rental compensation must not in any case exceed the maximum applicable in that case¹⁴; and where the taking possession of land which gives rise to rental compensation occurred before 1 July 1948¹⁵, the rental compensation must be assessed on the assumption that at all material times the land was subject to a permanent restriction¹⁶ of development¹⁷.

Where the requisitioned land¹⁸ consists only of rent-restricted land¹⁹, the rental compensation must not exceed the permissible rent²⁰.

Where the requisitioned land includes no rent-restricted land, the rental compensation must not exceed 160 per cent of what would be the amount, calculated by reference to the level of rental values obtaining in respect of comparable land at 31 March 1939, instead of by reference to the level obtaining immediately before possession of the land was taken, but otherwise in accordance with the Compensation (Defence) Act 1939 as originally enacted²¹.

Where the requisitioned land consists partly of rent-restricted land and as to the remainder of other land, the amount:

- 120 (a) which would be the limit of rental compensation²² if the requisitioned land consisted only of the rent-restricted land; and
 121 (b) which would be the limit of rental compensation for the whole of the requisitioned land if none of it were rent-restricted land,

must be ascertained; and the rental compensation must not exceed the aggregate of the amount ascertained under head (a) above and so much of the amount ascertained under head (b) above as is properly apportionable to that part of the requisitioned land which is not rent-restricted land²³.

1 As to the meaning of 'land' see PARA 508 note 4 ante.

2 For the meaning of 'emergency powers' see PARA 508 note 1 ante.

3 Compensation (Defence) Act 1939 s 2(1)(a). Any compensation under head (1) in the text is considered as accruing due from day to day during the period for which the possession of the land is taken in the exercise of emergency powers, and is apportionable in respect of time accordingly, and must be paid to the person who for the time being would be entitled to occupy the land but for the fact that possession of it is retained in the exercise of such powers; but payments are not required to be made at intervals of less than three months: see s 2(2).

For the purposes of the enactments relating to income tax, any compensation under head (1) in the text is deemed to be rent payable for the land, the Crown is deemed to pay it as tenant occupier, and the person receiving it is deemed to receive it as landlord: s 2(2) (amended by the Finance Act 1963 s 73(7), (8), Sch 13 Pt I, Sch 14 Pt VI).

4 'Fair wear and tear', in relation to any property possession of which is taken on behalf of the Crown or which is requisitioned on behalf of the Crown, means such fair wear and tear as might have been expected to occur but for the fact that possession of the property was so taken or that the property was so requisitioned, as the case may be: Compensation (Defence) Act 1939 s 17(1).

5 Ibid s 2(1)(b). 'War operations' means action taken by an enemy, or action taken in combating an enemy or in repelling an imagined attack by an enemy: s 17(1). Any compensation under head (2) in the text accrues due at the end of the period for which possession of the land is retained in the exercise of emergency powers, and must be paid to the person who is then the owner of the land: s 2(3). 'Owner' means:

13 (1) in relation to land, the person who is receiving the rackrent of the land, whether on his own account or as agent or trustee for any other person, or who would so receive the rackrent of the land if it were let at a rackrent; or

14 (2) in relation to any property other than land, the person entitled to sell the property, it being assumed not to be subject to any mortgage, pledge, lien or other similar obligation,

and in this definition the expression 'rackrent' in relation to any property means a rent which is not less than two-thirds of the rent at which the property might reasonably be expected to be let from year to year, free from all usual tenant's rates and taxes, and deducting the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the same in a state to command such rent: Public Health Act 1936 s 343 (amended by the Statute Law (Repeals) Act 1993); applied by the Compensation (Defence) Act 1939 s 17(1).

Where the damage in respect of which a sum is payable under s 2(1)(b) consists wholly or in part of the removal of fixed machinery or plant, such reduction, if any, in that compensation must be made as may appear to the Lands Tribunal to be just having regard to the way in which the machinery or plant has been dealt with, the likelihood of the machinery or plant being in fact replaced on the land and the reasonableness of replacing it, and any other circumstances which may appear to the tribunal to be relevant; provided that this does not authorise the making of any reduction if it would be inconsistent with any provision of any agreement (see the Compensation (Defence) Act 1939 s 15; and PARA 515 post): Requisitioned Land and War Works Act 1945 s 47. This provision originally referred to the General Claims Tribunal, but that tribunal was abolished and its jurisdiction transferred to the Lands Tribunal by the Land Powers (Defence) Act 1958 s 22. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

The compulsory purchase price of land in the state in which it was when compensation accrued due under the Compensation (Defence) Act 1939 s 2(1)(b) must be calculated without regard to: (a) war damage occurring during the period for which possession of the land was retained; or (b) any work done during that period in respect of which on such a compulsory acquisition the Requisitioned Land and War Works Act 1945 s 41(2), (3) (repealed) would apply: Requisitioned Land and War Works Act 1948 s 10(3)(a), (b). However, notwithstanding anything in the Requisitioned Land and War Works Act 1945 s 41 (repealed) regard must be had in calculating the price to all other damage occurring or work done on the land during that period: Requisitioned Land and War Works Act 1948 s 10(3).

Where, during the period for which possession of the land was retained, damage other than war damage occurred to any such work as is mentioned in head (b) supra, the amount to which the compensation is limited by virtue of s 10(1) (repealed) must be increased so as to take account of that damage to such extent as may be just having regard to any such expense, agreement or payment as is mentioned in the Requisitioned Land and War Works Act 1945 s 41(2), (3) (repealed): Requisitioned Land and War Works Act 1948 s 10(4).

6 'Agricultural land' means any land used as arable, meadow or pasture land, land used for a plantation or a wood or for the growth of saleable underwood, or land used for the purpose of poultry farming, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the Allotments Act 1922: Compensation (Defence) Act 1939 s 17(1).

7 Ibid s 2(1)(c). Any compensation under head (3) in the text accrues due at the time when possession of the land is taken in the exercise of emergency powers, and must be paid to the person who, immediately before that time, was the occupier of the land: s 2(4).

8 Ibid s 2(1)(d). Any compensation under head (4) in the text accrues due at the time when the expenses in respect of which the compensation is payable are incurred, and must be paid to the person by whom or on whose behalf those expenses were incurred: s 2(5).

9 The compensation calculated in accordance with ibid s 2(1)(a) (see the text and notes 1-3 supra) by reference to the rent which might reasonably be expected to be payable by a tenant in occupation of the land: see the Requisitioned Land and War Works Act 1948 s 7(1).

10 Where possession of any land is or has been retained in exercise of the right conferred by the Requisitioned Land and War Works Act 1945 s 28(2) (repealed) on the determination of some other right not conferred by emergency powers, the Requisitioned Land and War Works Act 1948 ss 7, 8, 10 (as amended) apply as if possession had been taken on the determination of that other right: s 7(3). The Requisitioned Land and War Works Act 1945 s 28(2) (repealed) provided that any minister might retain or authorise the retention of any land in his possession or in that of any person who was occupying or using it under his authority, notwithstanding the determination of any other right to it.

'Emergency powers' means emergency powers for the purposes of the Compensation (Defence) Act 1939 (see PARA 508 note 1 ante), exercised during the war period or, in the case of powers conferred by the Requisitioned Land and War Works Act 1945, during any period during which those powers are exercisable; and the 'war period' means the period during which the Emergency Powers (Defence) Act 1939 was in force: Requisitioned Land and War Works Act 1945 s 59(1). The Emergency Powers (Defence) Act 1939 came into operation on 24

August 1939 and expired on 24 February 1946. For certain provisions the war period was extended, but the relevant date now for the end of the war period for the purposes of the Requisitioned Land and War Works Act 1945 (except for any purposes for which that period had come to an end before 7 July 1958) is 31 December 1958: Land Powers (Defence) Act 1958 s 1(2).

11 Ie the Compensation (Defence) Act 1939 s 2 (as amended) (see the text and notes 1-8 supra). As to whether any appreciation of value due to the emergency should be taken into consideration see s 2(1)(i) proviso (repealed); and the Requisitioned Land and War Works Act 1948 s 7(2).

12 Ie the commencement of the Requisitioned Land and War Works Act 1948.

13 Ie the provisions of *ibid* s 7: s 7(1).

14 Ie under *ibid* s 8: see the text and notes 18-23 *infra*.

15 Ie the appointed day for the purposes of the Town and Country Planning Act 1947. This Act has been repealed: see now the Town and Country Planning Act 1990 s 55(6), Sch 3 (as amended); the Interpretation Act 1978 s 17(2)(a); and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 920.

16 Ie such a restriction as is specified in the Town and Country Planning Act 1947 s 55(3) (repealed). See note 15 *supra*.

17 Requisitioned Land and War Works Act 1948 s 7(2).

18 'Requisitioned land' means the aggregate of the land in respect of which, in any case, rental compensation falls to be assessed: *ibid* s 8(4).

19 'Rent-restricted land' means land consisting of one or more rent-restricted properties or parts thereof and of no other land: *ibid* s 8(4). 'Rent-restricted property' means a property, whether or not the subject of a tenancy, in the case of which the following conditions are fulfilled: (1) that immediately before the time when possession was taken of the whole or part of the property in question the property or part was being used for residential purposes, or if it was not then being used that it had been used for residential purposes when last used before that time; and (2) that if an unfurnished tenancy of the property had been granted immediately before that time, the amount of the rent recoverable under the tenancy would have been restricted by the Rent and Mortgage Interest Restrictions Acts 1920 to 1939 (consolidated by the Rent Act 1968: see now the Rent Act 1977; the Interpretation Act 1978 s 17(2)(a); and LANDLORD AND TENANT): Requisitioned Land and War Works Act 1948 s 8(4). 'Unfurnished tenancy' means a tenancy under which a property is let for residential purposes, not being a tenancy where the application of the Acts mentioned above is excluded by reason of the property being let at a rent including payments in respect of board, attendance or use of furniture: s 8(4).

20 *Ibid* s 8(1). 'Permissible rent' means: (1) in relation to a rent-restricted property, the maximum rent which would in accordance with the Rent and Mortgage Interest Restrictions Acts 1920 to 1939 (see note 19 *supra*) have been recoverable under the tenancy referred to in head (2) of the definition of rent-restricted property in note 19 *supra*, on the assumption that the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses if any, necessary to maintain the property in a state to command that rent; (2) in relation to part of a rent-restricted property, so much of the maximum rent as is properly apportionable to it: Requisitioned Land and War Works Act 1948 s 8(4).

21 *Ibid* s 8(2).

22 Ie under *ibid* s 8(1) (see the text and notes 18-20 *supra*).

23 *Ibid* s 8(3).

UPDATE

509 Compensation in respect of taking possession of land; rental compensation

NOTE 5--Reference to the Lands Tribunal is now to the Upper Tribunal: Requisitioned Land and War Works Act 1945 s 47 (amended by SI 2009/1307). Land Powers (Defence) Act 1958 s 22 repealed: SI 2009/1307.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(i) The Compensation (Defence) Act 1939/510. Compensation in respect of doing work on land.

510. Compensation in respect of doing work on land.

Compensation¹ under the Compensation (Defence) Act 1939 in respect of the doing of any work on any land² is payable only if the annual value of the land is diminished by reason of the doing of the work³. If, at any time after such compensation has become payable by reason of the doing of any work on any land, a person acting on behalf of the Crown: (1) causes the land to be restored, so far as practicable, to the condition in which it would be but for the doing of the work; or (2) serves on the person for the time being entitled to occupy the land a written notice⁴ of intention to discharge the liability for the compensation by making, not earlier than a date specified in the notice, payment of a lump sum in accordance with the statutory provisions⁵, the period in respect of which compensation is payable by reason of the doing of the work ends with the date immediately preceding the date on which the restoration is completed or, as the case may be, the date specified in the notice⁶. However, no compensation, in relation to any land, is payable under these provisions in respect of any period for which possession of that land is taken on behalf of the Crown in the exercise of emergency powers⁷.

The doing on any land of work to which these provisions apply is treated as a single operation with the doing of any other such work, whether before or after, except: (a) work done before in respect of which any person has⁸ become entitled to receive from the Crown a lump sum by way of compensation; and (b) work done before consisting of the construction of works in respect of which an amount has been paid to the minister⁹; and, on the doing of the later work, any award by the Lands Tribunal¹⁰ of compensation in respect of the earlier work may, except as respects compensation accruing before the doing of the later work, be varied accordingly on the application of the Crown or of any other interested person¹¹.

1 The compensation so payable is, in the first instance, a sum calculated by reference to the diminution of the annual value of the land ascribable to the doing of the work, and must be paid in instalments, quarterly in arrears, to the person who for the time being is entitled to occupy the land: Compensation (Defence) Act 1939 s 3(2). Any compensation under this provision is considered as accruing due from day to day, and is apportionable in respect of time accordingly: s 3(2). 'Annual value' means, in relation to any land, the rent at which the land might reasonably be expected to be let from year to year, if the tenant undertook to pay all usual tenant's rates and taxes and to bear the costs of the repairs and insurance and other expenses, if any, necessary to maintain the land in a state to command that rent; and 'diminution of the annual value' means, in relation to the doing of any work on any land, the amount by which the annual value of the land is less than it would be if the work had not been done: s 3(9). In determining whether the annual value of any land is diminished by reason of the doing of any work on it, and in assessing any compensation under s 3 in respect of the doing of any work on any land, it must be assumed that the land cannot be restored to the condition in which it would be but for the doing of the work: s 3(6). This does not apply to compensation under s 3(4) (see note 6 infra): Requisitioned Land and War Works Act 1945 s 49. For the purposes of the Compensation (Defence) Act 1939 s 3, no account must be taken of any diminution or depreciation in value ascribable only to loss of pleasure or amenity: s 3(7).

Nothing in s 3 applies to damage to land occurring while possession of the land is retained: Requisitioned Land and War Works Act 1948 s 11(2).

2 For the purposes of the Compensation (Defence) Act 1939 and the Requisitioned Land and War Works Act 1945, the 'doing of work on land' means the doing of any work on, over or below the surface of the land, and, in particular, includes the making of any erection or excavation, the placing of any thing, and the maintenance, removal, demolition, pulling down, destruction or rendering useless of any thing, on, over or below that surface: Compensation (Defence) Act 1939 s 17(2) (substituted by the Requisitioned Land and War Works Act 1945 s 50); Requisitioned Land and War Works Act 1945 s 59(2). As to the meaning of 'land' see PARA 508 note 4 ante.

3 Compensation (Defence) Act 1939 s 3(1).

4 Any notice which is required or authorised to be served by the Compensation (Defence) Act 1939 on any person may be served by post: s 16.

5 le the provisions contained in *ibid* s 3(4) (see note 6 *infra*).

6 *Ibid* s 3(3). Where, by virtue of the operation of s 3(3) in relation to any work done on any land, the period in respect of which compensation under s 3(1) (see the text and notes 1-3 *supra*) is payable by reason of the doing of the work comes to an end, then if, at the expiration of that period, the value of any estate or interest which a person then has in the land is less than it would be but for the doing of the work, there must be paid to him, by way of compensation, a sum equal to the amount of the depreciation in the value of the estate or interest; and that compensation is taken to accrue due at the expiration of that period: s 3(4).

Where under s 3(4) any payment was made before 19 February 1948 in respect of a government oil pipeline or accessory works, the payment must be treated as a payment in respect of the estate or interest in question on account of the share attributable to that estate or interest of any compensation under the Requisitioned Land and War Works Act 1948 s 13(2) (as amended) (see *PARA 528 post*), and interest under s 13(4) (see *PARA 528 note 27 post*) must be reduced accordingly; and after 19 February 1948 no payment under the Compensation (Defence) Act 1939 s 3(4) may be made in respect of a government oil pipeline or accessory works, whether it accrued due before or after 19 February 1948: Requisitioned Land and War Works Act 1948 s 13(5). As to government oil pipelines see *PARA 528 post*.

However, in the case of a payment under the Compensation (Defence) Act 1939 s 3(4) which accrued due to any person before 19 February 1948 but has not been made before that date, that person is entitled to interest on the payment in accordance with the provisions of that Act as from the date when the payment accrued due until 19 February 1948: Requisitioned Land and War Works Act 1948 s 13(5) proviso.

As soon as may be after effecting any restoration or serving any notice in pursuance of the Compensation (Defence) Act 1939 s 3(3), the person by whom the restoration was effected or the notice was served must cause the fact of the restoration or the contents of the notice, as the case may be, to be published in such manner as he thinks best adapted for informing persons affected: s 3(5).

7 *Ibid* s 3(8).

8 le by virtue of *ibid* s 3(3) (see the text and notes 4-6 *supra*) or by virtue of any agreement: see the Requisitioned Land and War Works Act 1945 s 48(1).

9 le under *ibid* Pt II (ss 4-14) (repealed) in pursuance of a report of the War Works Commission. The War Works Commission was established under s 1(1), and later dissolved by the War Works Commission (Dissolution) Order 1964, SI 1964/1578.

'Minister' means a Minister of the Crown and includes the Commissioners of Works, the Board of Trade and the Board of Education, but does not include a minister of Northern Ireland: Requisitioned Land and War Works Act 1945 s 59(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II). The functions and property of the Commissioners of Works under the Requisitioned Land and War Works Act 1945 were transferred to the Secretary of State by the Secretary of State for the Environment Order 1970, SI 1970/1681 (lapsed). As to the Board of Trade generally see *CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505*; *TRADE AND INDUSTRY vol 97 (2010) PARA 802*. As to the Secretary of State see *PARA 413 note 14 ante*. The functions and property of the Board of Education are now vested in the Secretary of State for Education and Skills: see *EDUCATION vol 15(1) (2006 Reissue) PARA 52*.

10 As to the jurisdiction of the Lands Tribunal see *PARA 509 note 5 ante*. As to the Lands Tribunal generally see *COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq*.

11 Requisitioned Land and War Works Act 1945 s 48(1). However, the power to vary awards conferred by s 48(1) does not apply to any award made before the passing of the Requisitioned Land and War Works Act 1945 in respect of any land, unless further work to which the Compensation (Defence) Act 1939 s 3 applies has been done on that land since the doing of the latest work to which the award relates: Requisitioned Land and War Works Act 1945 s 48(1) proviso.

Where, during the war period, any works have been constructed or other thing has been placed in, on or over any land by or by arrangement with a minister otherwise than in the exercise of emergency powers, then, unless it has been expressly agreed that the Crown is to have no interest in the works or the thing so constructed or placed, or the works or thing have or has been so constructed or placed in the exercise of powers conferred by any statute, s 48(1) has effect as if the construction or placing were work done on the land in the exercise of emergency powers: s 48(2). For the meanings of 'war period' and 'emergency powers' see *PARA 509 note 10 ante*.

UPDATE

510 Compensation in respect of doing work on land

TEXT AND NOTES 8, 11--Reference to the Lands Tribunal is now to the Upper Tribunal:
Requisitioned Land and War Works Act 1945 s 48(1) (amended by SI 2009/1307).

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WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(i) The
Compensation (Defence) Act 1939/511. Transports and certain machinery.

511. Transports and certain machinery.

The compensation payable under the Compensation (Defence) Act 1939 for the requisition¹ in the exercise² of emergency powers³ of any vessel⁴, vehicle or aircraft⁵ or excavator, crane or agricultural implement or agricultural, mining or quarrying machinery is the aggregate of five sums or such of them as are applicable in the circumstances⁶. These are:

- 122 (1) a sum equal to the charge which might reasonably be expected to have been payable by a person during the period of the requisition under a charter or contract of hiring for the requisition period on the terms that he should be responsible for insurance, maintenance and running costs⁷;
- 123 (2) if an agreement was made by the Crown for the running of the vessel etc by the person who, but for the requisition, would have been entitled to possession or who is the owner⁸, a sum equal to any maintenance and running expenses reasonably incurred by him during the requisition period and not taken into account under head (1) above⁹;
- 124 (3) a sum equal to the cost of making good any damage¹⁰ (other than fair wear and tear¹¹) not resulting in total loss occurring during the requisition period and not made good by the Crown¹²;
- 125 (4) in the case of total loss occurring during the requisition period, a sum equal to the value of the requisitioned property immediately prior to the damage causing the loss¹³; and
- 126 (5) a sum equal to any reasonable expenses incurred, otherwise than on behalf of the Crown, in complying with directions given on behalf of the Crown in connection with the requisition¹⁴.

Any compensation payable under head (1) above is deemed to accrue from day to day during the period of requisition and is apportionable in respect of time accordingly, and is payable to the person who, at the time when it accrues, is the owner of the requisitioned property¹⁵, who is, however, deemed to receive it as trustee for any person who by virtue of a subsisting charter or hiring contract would have been entitled to possession or use of the property but for the requisition¹⁶.

So much of the compensation as amounts to the refund of expenses¹⁷ accrues when the expenses in question are incurred, and is payable to the person by or on behalf of whom those expenses were incurred¹⁸. Compensation for damage or total loss¹⁹ accrues at the end of the requisition period, and is payable to the owner of the property damaged or destroyed²⁰.

For these purposes, 'total loss' has the same meaning as in insurance law and accordingly includes 'constructive total loss'²¹, and upon payment of compensation for total loss²² the Crown has rights similar to those of an insurer who has paid under a contract of insurance²³.

The compensation payable for the acquisition of property²⁴ of the kinds described is a sum equal to the value of that property immediately before the acquisition, no account being taken either of any appreciation due to the emergency or of any compensation under head (1) or

head (3) above which may have become payable in respect of the requisition of the property; and the compensation is payable to the person who is then the owner²⁵.

1 For the meaning of 'requisition' see PARA 508 note 3 ante.

2 As to the meaning of 'exercise' see PARA 508 note 1 ante.

3 For the meaning of 'emergency powers' see PARA 508 note 1 ante.

4 'Vessel' and 'ship' have the same meaning as 'ship' in the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 229): Compensation (Defence) Act 1939 s 17(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 18). As to compensation for the requisition of vessels see also *Re Mersey Docks and Harbour Board and Admiralty Comrs* [1920] 3 KB 223, DC; *Brooke v R* [1921] 2 KB 110; *Elliott Steam Tug Co Ltd v Shipping Controllers* [1922] 1 KB 127, CA; *Federated Coal and Shipping Co Ltd v R* [1922] 2 KB 42; *A-G v Royal Mail Steam Packet Co* [1922] 2 AC 279, HL; *Moss Steamship Co v Board of Trade* [1924] AC 133, HL (all decided in relation to repealed legislation). As to the prerogative power to requisition ships see PARA 411 ante.

5 'Aircraft' means any flying machine, glider or airship or any balloon, whether fixed or free: Compensation (Defence) Act 1939 s 17(1).

6 Ibid s 4(1) (s 4(1)(a)-(d), (2)-(9) amended by the Defence (General) Regulations 1939, SR & O 1939/927, reg 79C). Although the Defence (General) Regulations 1939, SR & O 1939/927, reg 79C was revoked by SI 1950/182, it would appear that by virtue of the Interpretation Act 1978 s 16(1), Sch 2 para 3 (as applied by the Defence (General) Regulations 1939, SR & O 1939/927, reg 99B (now lapsed)) the revocation did not affect the amendments made by it.

7 Compensation (Defence) Act 1939 s 4(1)(a) (as amended: see note 6 supra). Compensation under this head is commonly referred to as 'the bareboat element': see *Port Line Ltd v Ben Line Steamers Ltd* [1958] 2 QB 146, [1958] 1 All ER 787. In computing what would be reasonable hiring charges, no account is to be taken of any appreciation in value due to the emergency: Compensation (Defence) Act 1939 s 4(1) proviso (i) (as so amended).

8 For the meaning of 'owner' see PARA 509 note 5 ante.

9 Compensation (Defence) Act 1939 s 4(1)(b) (as amended: see note 6 supra).

10 No compensation will be payable in respect of any loss of or damage to any vehicle or aircraft arising in consequence of war operations unless it is shown that, at the time when the loss or damage occurred, the risk of the vehicle or aircraft being lost or damaged in consequence of war operations was materially increased by reason of their requisition in the exercise of emergency powers: ibid s 4(1) proviso (ii). For the meaning of 'war operations' see PARA 509 note 5 ante. No compensation will be payable by virtue of head (3) in the text be payable in respect of any damage, if compensation in respect of expenses incurred for the purpose of making good that damage has accrued due by virtue of head (2) in the text: s 4(1) proviso (iii).

11 For the meaning of 'fair wear and tear' see PARA 509 note 4 ante. For the comparable position under the Army Act 1955 see s 168(1)(b); and ARMED FORCES vol 2(2) (Reissue) PARA 133.

12 Compensation (Defence) Act 1939 s 4(1)(c) (as amended: see note 6 supra).

13 Ibid s 4(1)(d) (as amended: see note 6 supra).

14 Ibid s 4(1)(e).

15 Ibid s 4(2) (as amended: see note 6 supra). Payments under this provision are not to be required at intervals of less than one month: s 4(2) (as so amended).

16 Ibid s 4(3) (as amended: see note 6 supra). See also *Port Line Ltd v Ben Line Steamers Ltd* [1958] 2 QB 146, [1958] 1 All ER 787.

17 I.e compensation under heads (2), (5) in the text.

18 Compensation (Defence) Act 1939 s 4(4) (as amended: see note 6 supra). Payments under this provision are not to be required at intervals of less than one month: s 4(4) (as so amended).

19 I.e compensation under heads (3)-(4) in the text.

- 20 Compensation (Defence) Act 1939 s 4(5) (as amended: see note 6 supra).
- 21 As to total loss and constructive total loss see INSURANCE vol 25 (2003 Reissue) PARA 458 et seq.
- 22 I.e compensation under head (4) in the text.
- 23 See the Compensation (Defence) Act 1939 s 4(6) (as amended: see note 6 supra). These rights are to take over any interest in whatever remains of the property and all such rights and remedies in and in respect of the property as the Crown would have had if the payment had been made by the Crown as insurer under a contract of insurance against loss: see s 4(6) (as so amended).
- 24 As to the date treated as the date of acquisition or sale for the purposes of compensation and as to notice of sale see *ibid* s 4(8), (9) (as amended: see note 6 supra).
- 25 *Ibid* s 4(7) (as amended: see note 6 supra).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(i) The Compensation (Defence) Act 1939/512. Taking space or accommodation in ships and aircraft.

512. Taking space or accommodation in ships and aircraft.

The compensation payable for taking space or accommodation in a ship or aircraft¹ is the aggregate of the following sums:

- 127 (1) a sum equal to the amount which might reasonably be expected to be payable for the use of that space or accommodation during the period for which it is taken, no account being taken of any appreciation in value due to the emergency²; and
- 128 (2) a sum equal to the amount of any expenses reasonably incurred, otherwise than on behalf of the Crown, in complying with directions given on behalf of the Crown in connection with the taking of the space or accommodation³.

Any part of the compensation payable under head (1) above is deemed to accrue from day to day during the period for which the space or accommodation is taken and is apportionable in respect of time accordingly⁴. This part of the compensation is payable to the person who is the owner⁵ of the ship or aircraft at the time when the compensation accrues⁶, but no payment can be required before the end of the above mentioned period⁷. Any part of the compensation which is payable under head (2) above accrues at the time when the expenses in respect of which the compensation is payable are incurred and is payable to the person by or on behalf of whom they were incurred⁸.

1 For the purposes of the Compensation (Defence) Act 1939 s 1 (see PARA 508 ante), the taking of such space or accommodation is deemed to be a requisition of property: see s 1(2). For the meaning of 'requisition' see PARA 508 note 3 ante. As to the meaning of 'ship' see PARA 511 note 4 ante. For the meaning of 'aircraft' see PARA 511 note 5 ante. As to compensation generally see PARA 508 ante.

2 *Ibid* s 5(1)(a). As to the period of the emergency see PARA 508 note 2 ante.

3 *Ibid* s 5(1)(b). Disputes as to the payment of compensation for the taking of space or accommodation in vessels are referred to the Shipping Claims Tribunal: see PARA 514 note 1 post.

4 *Ibid* s 5(2).

5 For the meaning of 'owner' see PARA 509 note 5 ante.

6 Where a person other than the owner is entitled to possession of, or to use, the ship or aircraft under a subsisting charter or hiring agreement or is, by virtue of a subsisting contract, the person who would have been entitled to use the space or accommodation if it had not been taken on behalf of the Crown, the owner receives the part of the compensation payable under head (1) in the text as trustee for that person: Compensation (Defence) Act 1939 s 5(3).

7 Ibid s 5(2).

8 Ibid s 5(4).

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513. Goods other than transports and certain machinery.

The compensation payable in respect of the requisition¹ or acquisition of goods² other than vessels³, vehicles, aircraft⁴ and specified types of plant and machinery⁵ is a sum equal to their market price⁶, having regard to their condition at the time but no account being taken of any appreciation in value due to the emergency⁷. In the case of requisition or acquisition from an owner⁸ who had produced the goods⁹ with a view to sale, the compensation is not to exceed the reasonable cost of production and the profit which he might reasonably have been expected to make on a sale immediately before the requisition or acquisition, and, in the case of requisition or acquisition from an owner who bought the goods with a view to resale, the compensation is not to exceed the price which it was reasonable for him to pay and the profit which he might reasonably have been expected to make on a resale immediately before the requisition¹⁰. Except in these two cases, no account is to be taken of any profit which might have been made on a sale of the goods¹¹. Where at the date of requisition or acquisition the price or maximum price at which the goods might be sold was fixed by law, the compensation is limited to a sum not exceeding that price or maximum price¹².

The compensation payable includes a sum equal to the amount of any expenses reasonably incurred, otherwise than on behalf of the Crown, in complying with any directions given by or on behalf of the Crown in connection with the requisition or acquisition¹³.

1 For the meaning of 'requisition' see PARA 508 note 3 ante.

2 'Goods' means chattels other than vessels, vehicles and aircraft: Compensation (Defence) Act 1939 s 17(1).

3 As to the meaning of 'vessel' see PARA 511 note 4 ante.

4 For the meaning of 'aircraft' see PARA 511 note 5 ante. As to the requisitioning of aircraft see PARA 508 note 14 ante.

5 I.e. goods other than those in respect of which compensation is assessed under the Compensation (Defence) Act 1939 s 4 (as amended) (see PARA 511 ante).

6 I.e. the sum which the owner might reasonably have been expected to obtain upon a sale of the goods immediately before the requisition or acquisition: see *ibid* s 6(1).

7 *Ibid* s 6(1). Compensation accrues at the time of requisition or acquisition and, subject to certain statutory provisions, is payable to the then owner of the goods: see s 6(4). As to the situation where such goods are deemed free of mortgage, pledge or lien see s 14 (as amended); and PARA 516 note 8 post. As to the determination of disputes concerning the payment of compensation see PARA 514 post.

8 For the meaning of 'owner' see PARA 509 note 5 ante.

- 9 This includes the personal representative or successor in business of the actual producer: see the Compensation (Defence) Act 1939 s 6(2).
- 10 Ibid s 6(2)(a), (b).
- 11 See ibid s 6(2).
- 12 See ibid s 6(2) proviso.
- 13 Ibid s 6(3). Compensation under s 6(3) accrues at the time when the expenses are incurred and is payable to the person by or on behalf of whom they were incurred: s 6(5).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(i) The Compensation (Defence) Act 1939/514. Tribunals for determining disputes.

514. Tribunals for determining disputes.

Any dispute as to whether any compensation is payable under the Compensation (Defence) Act 1939, or as to the amount of any compensation so payable, must, in default of agreement, be referred to, and determined by, the appropriate tribunal¹ whose decision is final; provided that at any stage in proceedings before it the tribunal may, and, if so directed by the High Court², must, state in the form of a special case for the opinion of that court any question of law arising in the course of the proceedings³.

Each of the tribunals constituted under the Compensation (Defence) Act 1939 has the following powers:

- 129 (1) to make, with the concurrence of the Lord Chancellor, rules prescribing the procedure for notifying, presenting and hearing claims and all incidental matters⁴;
- 130 (2) to order persons to attend and give evidence, and to produce and give discovery and inspection of documents, in like manner as in proceedings in the High Court⁵;
- 131 (3) to award and assess, or direct the assessment of, such sums by way of costs as the tribunal in its discretion thinks just, and in particular to award costs to an unsuccessful claimant where such an award appears to the tribunal to be justified on the merits of the case⁶;
- 132 (4) to call in the aid of one or more assessors specially qualified, and hear any claim wholly or partly with their assistance⁷;
- 133 (5) to appoint an expert or experts to report on any matter material to the hearing of any claim⁸;
- 134 (6) to determine, subject to the approval of the Treasury, the remuneration, if any, of such assessors and experts⁹.

1 Disputes as to the payment of compensation for the requisition or acquisition of vessels or the taking of space or accommodation in vessels are referred to the Shipping Claims Tribunal: see the Compensation (Defence) Act 1939 s 8(1), (2). The remuneration and expenses of this tribunal are defrayed out of moneys provided by Parliament: see s 8(5). In the case of aircraft and property other than vessels, disputes are now referred to the Lands Tribunal: see s 8(3), (4) (repealed); and PARA 509 note 5 ante. As to the meaning of 'vessel' see PARA 511 note 4 ante. As to the Lands Tribunal generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

2 The 'High Court' means the High Court of Justice in England: ibid s 17(1).

3 Ibid s 7.

4 Ibid s 9(1)(a). As from a day to be appointed, s 9(1)(a) is repealed and replaced by s 9(1A), (1B), under which provision is made for rules prescribing the procedure for notifying, presenting and hearing claims and all matters incidental to them to be made by the Lord Chancellor in relation to each of the tribunals constituted under the Compensation (Defence) Act 1939: s 9(1A), (1B) (prospectively added by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 21(1), (4)). At the date at which this volume states the law, no such day had been appointed. Rules made under the Compensation (Defence) Act 1939 s 9(1)(a) (prospectively repealed) or s 9(1A) (prospectively added) may contain provisions authorising a tribunal to take into consideration any matter which the tribunal considers relevant to the subject of the inquiry before it, notwithstanding that the matter is not admissible in evidence under the law relating to evidence: see s 9(2) (prospectively amended by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 21(1), (4)). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Compensation (Defence) Act 1939 s 9(1)(b). The High Court has, for the purposes of, and in relation to, any proceedings under the Compensation (Defence) Act 1939, the same power of making orders in respect of any of the matters specified in head (2) in the text as it has for the purpose of and in relation to an action or matter in that court: s 9(3).

6 Ibid s 9(1)(c).

7 Ibid s 9(1)(d).

8 Ibid s 9(1)(e).

9 Ibid s 9(1)(f). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

UPDATE

514 Tribunals for determining disputes

NOTE 1--See Constitutional Reform Act 2005 s 19(5), Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 4--Day now appointed: SI 2006/1014.

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515. Compensation payable.

Any compensation under the Compensation (Defence) Act 1939 carries interest, as from the date on which it accrues due until payment, at such rate not exceeding five per cent per annum as the Treasury may from time to time by order prescribe¹. All forms of compensation may be made the subject of an agreement in lieu of being ascertained under the statutory provisions².

No claim for any compensation may be entertained unless notice³ of the claim has been given to the prescribed⁴ authority within the requisite period⁵. No person is entitled to compensation in respect of the acquisition on behalf of the Crown of any currency, gold or securities, or in respect of the taking control on behalf of the Crown of any railway undertaking or any undertaking carried on by any person by whom a railway undertaking is carried on, or of any part of such an undertaking⁶. No compensation is payable to any person in respect of any loss of, or damage to, property, if and so far as: (1) he has become entitled⁷ to recover any sum by way of damages or indemnity; or (2) he is, at the time of the loss or damage, required under any contract with the Crown to be insured for such loss or damage⁸.

1 Compensation (Defence) Act 1939 s 10. See eg the Interest on Compensation (Defence) Order 1940, SR & O 1940/107 (prescribing a rate of 2%). As to the basis of assessment of compensation see generally COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 753 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 See the Compensation (Defence) Act 1939 s 15.

3 As to the service of notices see PARA 510 note 4 ante.

4 le prescribed by rules made by the Treasury: Compensation (Defence) Act 1939 s 17(1).

5 See *ibid* s 11.

6 *Ibid* s 12(1).

7 le apart from the provisions of the Compensation (Defence) Act 1939.

8 *Ibid* s 12(2).

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516. Property subject to hire-purchase agreements, mortgages or pledges.

In a case where any property, in respect of the requisition¹ or acquisition of which compensation is required to be paid to the person who is the owner of the property immediately before the requisition or acquisition, is then in the possession of some other person by virtue of a hire-purchase agreement² or a conditional sale agreement³, that person may⁴, in relation to the making of any claim for compensation by the owner, make a claim to have the compensation apportioned⁵. In default of agreement between the parties, the latter claim must be referred to the tribunal⁶ which has jurisdiction in the matter of any such claim by the owner, and that tribunal may apportion the compensation between the two parties⁷.

Where any sum by way of compensation is paid in accordance with any provisions requiring compensation to be paid to the owner of any property, then, if at the time when the compensation accrues due, the property is subject to any mortgage, pledge, lien or other similar obligation, the sum so paid is deemed to be comprised in that mortgage, pledge, lien or other obligation⁸.

1 For the meaning of 'requisition' see PARA 508 note 3 ante.

2 'Hire-purchase agreement' means an agreement which is a consumer credit agreement within the meaning of the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) PARA 81), other than a conditional sale agreement (see note 3 *infra*), under which: (1) goods are bailed in return for periodical payments by the person to whom they are bailed; and (2) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs: (a) the exercise of an option to purchase by that person; (b) the doing of any other specified act by any party to the agreement; (c) the happening of any other specified event: Compensation (Defence) Act 1939 s 17(1) (amended by the Consumer Credit Act 1974 s 192(3), Sch 4 para 8). See further CONSUMER CREDIT vol 9(1) (Reissue) PARA 95.

3 'Conditional sale agreement' means an agreement for the sale of goods which is a consumer credit agreement within the meaning of the Consumer Credit Act 1974 under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled: Compensation (Defence) Act 1939 s 17(1) (as amended: see note 2 *supra*). See further CONSUMER CREDIT vol 9(1) (Reissue) PARA 93.

4 le by a notice given in the prescribed form and manner to the prescribed authority, within the requisite period: see *ibid* s 13. 'Prescribed' means prescribed by rules made by the Treasury: s 17(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the service of notices see PARA 510 note 4 ante.

5 *Ibid* s 13 (amended by the Consumer Credit Act 1974 s 192(4), Sch 4 Pt 1 para 7).

6 As to tribunals for determining disputes concerning compensation see PARA 514 ante.

7 Compensation (Defence) Act 1939 s 13.

8 *Ibid* s 14(1) (amended by the Statute Law (Repeals) Act 1989). Where any goods have been requisitioned in such circumstances as to give a right to compensation assessed under the Compensation (Defence) Act 1939 s 6 (see PARA 513 ante), the ownership of the goods is deemed to have vested in the Crown as from the time of requisition free from any mortgage, pledge, lien or similar obligation: s 14(2) (added by the Statute Law (Repeals) Act 1989). As to mortgages generally see MORTGAGES; as to pledges see PLEDGES AND PAWNS; and as to liens see LIEN.

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(ii) The Defence of the Realm (Acquisition of Land) Acts 1916 and 1920

517. In general.

Most of the powers conferred on government departments and the Crown relating to the treatment of requisitioned land¹ and war works in connection with the 1914-18 war have long since expired. However, certain provisions remain in force which relate to: (1) the power to grant or demise land to a government department² in consideration of a fee farm or other rent³; (2) the use of land acquired under the power of acquisition⁴; (3) the disposition of land so acquired and the right of pre-emption of former owners⁵; (4) the maintenance of works laid on highways and the stopping up of highways⁶; and (5) the application of building laws to land occupied or acquired⁷.

1 For the purposes of the Defence of the Realm (Acquisition of Land) Act 1916, and of the provisions of the Lands Clauses Acts incorporated with that Act, 'land' includes any building or part of a building, any pier, jetty, or other structure on the shore or bed of the sea or any river, and any easement or right over or in relation to land: Defence of the Realm (Acquisition of Land) Act 1916 s 12(1). For the purposes of the Defence of the Realm (Acquisition of Land) Act 1916, except where the context otherwise requires, 'building' includes machinery and plant fixed or attached to the building: s 12(3) (amended by the Statute Law (Repeals) Act 1953). Power to acquire land on behalf of the Crown was conferred by the Defence of the Realm (Acquisition of Land) Act 1916 s 3(1)-(6) (repealed). As to the Lands Clauses Acts see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq.

2 For these purposes, a competent naval or military authority acting under the Acts relating to the defence of the realm is deemed to be a government department: Defence of the Realm (Acquisition of Land) Act 1916 s 12(5).

3 See *ibid* s 3(7); and PARA 518 post. As to fee farm rents see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 756.

4 See *ibid* s 4; and PARA 519 post.

5 See *ibid* s 5 (as amended); and PARA 520 post.

6 See *ibid* s 6; and PARA 521 post.

7 See *ibid* s 11; and PARA 522 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(ii) The Defence of the Realm (Acquisition of Land) Acts 1916 and 1920/518. Grant or demise of land to a government department.

518. Grant or demise of land to a government department.

Any person having power, whether subject to any consent or conditions or not, to sell land¹ authorised to be acquired by any government department² may, subject to the like consent and conditions, grant or demise the land in perpetuity or for any term of years to the government department at such fee farm or other rent³, secured by such conditions of re-entry or otherwise as may be agreed, and with or without a right of renewal, or grant to the government department an option to acquire the land⁴. However, where the power to sell arises under the enactments relating to settled land⁵, these powers must be exercised only with the consent of the trustees of the settlement for the purposes of those Acts, or with the sanction of the court⁶.

Where possession has been taken of any land⁷ under any agreement authorising the retention of the land for any period specified in the agreement, nothing in the Defence of the Realm (Acquisition of Land) Act 1916 authorises the retention of possession after the expiration of that period without the consent of the person with whom the agreement was made or the persons deriving title under him⁸.

1 As to the meaning of 'land' see PARA 517 note 1 ante.

2 As to the meaning of 'government department' see PARA 517 note 2 ante. Power to acquire land on behalf of the Crown was conferred by the Defence of the Realm (Acquisition of Land) Act 1916 s 3(1)-(6) (repealed).

3 As to fee farm rents see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 756.

4 Defence of the Realm (Acquisition of Land) Act 1916 s 3(7).

5 I.e. the Settled Lands Acts 1882 to 1890 (repealed). These Acts were replaced by the Settled Land Act 1925: see SETTLEMENTS vol 42 (Reissue) PARA 678.

6 Defence of the Realm (Acquisition of Land) Act 1916 s 3(7) proviso.

7 For these purposes, the exercise or enjoyment of any easement or right over or in relation to land is deemed to be possession of that easement or right: see the Defence of the Realm (Acquisition of Land) Act 1920 s 6 (amended by the Statute Law Revision Act 1927).

8 Defence of the Realm (Acquisition of Land) Act 1916 s 13(3).

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519. Use of land acquired under power of acquisition.

Any land¹ which, or an interest in which, was acquired under the Defence of the Realm (Acquisition of Land) Act 1916 may be used by any government department² for the purpose for which it was used during the war or for any other purpose for which it could have been used

had the land been acquired under the Defence Acts 1842 to 1873³ or the Military Lands Acts 1892 to 1903⁴, notwithstanding that such user could, but for the Defence of the Realm (Acquisition of Land) Act 1916, have been restrained as being in contravention of any covenant or for any other reason⁵. No one interested in any adjoining or neighbouring land or entitled to any riparian rights is entitled to restrain such user; but if any such person would otherwise⁶ have been entitled to restrain such user, then, if application is made within three years after the date of the acquisition of the land or after the commencement of the user causing the depreciation, whichever is the later, he is entitled: (1) if the land is used for a purpose for which it could have been used had the land been acquired under the Defence Acts 1842 to 1873, or the Military Lands Acts 1892 to 1903, to compensation⁷ in respect of any breach of a restrictive covenant or damage caused by the pollution, abstraction, or diversion of water, or by the emission of noxious fumes⁸; and (2) if the land is used for any other purpose, to compensation in respect of any damage occasioned by such user⁹.

However, where such compensation is claimed in respect of any land, the department may, at any time before the claim is determined, and on payment of all costs properly incurred by the claimant in respect of his claim, require the claimant to sell the land or his interest in it at such price as would have been proper if the value of the land had not been so depreciated¹⁰. These provisions do not deprive any one of the right to recover damages in respect of any injury to property caused by accident due to such user¹¹.

1 As to the meaning of 'land' see PARA 517 note 1 ante. Power to acquire land on behalf of the Crown was conferred by the Defence of the Realm (Acquisition of Land) Act 1916 s 3(1)-(6) (repealed).

2 As to the meaning of 'government department' see PARA 517 note 2 ante.

3 As to the Defence Acts 1842 to 1873 see ARMED FORCES vol 2(2) (Reissue) PARA 125.

4 As to the Military Lands Acts 1892 to 1903 see ARMED FORCES vol 2(2) (Reissue) PARA 119.

5 Defence of the Realm (Acquisition of Land) Act 1916 s 4.

6 Ie apart from the Defence of the Realm (Acquisition of Land) Act 1916.

7 In default of agreement, the compensation is to be determined by the Lands Tribunal: see *ibid* ss 4(i), (ii), 8 (repealed); the Railway and Canal Commission (Abolition) Act 1949 s 3(1); and the Lands Tribunal Act 1949 s 1(3)(a)(i). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

8 Defence of the Realm (Acquisition of Land) Act 1916 s 4(i).

9 *Ibid* s 4(ii).

10 *Ibid* s 4(a).

11 *Ibid* s 4(b).

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520. Disposition of land acquired and right of pre-emption.

Where any land¹, or any interest in land, has been acquired by any government department², the department may at any time thereafter sell, lease, or otherwise dispose of the land or interest³.

Where any such land is disposed of, then on the execution and delivery to the purchaser by the government department concerned of the necessary or proper assurance of the land disposed of, the purchaser, notwithstanding any defect in the title of the government department, stands possessed of such estate or interest as may be expressed or intended to be assured to him, freed and absolutely discharged from all prior interests; provided that if, at any time after such disposition, any such prior interest is established, compensation must be paid⁴ with respect to interests in lands which by mistake have been omitted to be purchased⁵.

Before any government department sells any such land it must, unless it is land on which permanent buildings⁶ have been erected wholly or partly at the expense of the state or by arrangement with any government department or it is land used in connection with such buildings, first offer to sell⁷ it to the person then entitled to the lands, if any, from which it was originally severed⁸.

If any such person wishes to purchase such lands, then within six weeks after the offer he must notify the government department concerned; if he declines the offer, or if for six weeks he fails to notify the department of his intent to purchase the lands, his right of pre-emption ceases⁹.

These provisions¹⁰ apply in the case of a lease of land for a term exceeding 21 years in the same way as they apply to a sale of land, except where the land is leased for the purpose of its development in connection with any factory, building, camp, or other premises erected or established on land retained by the government¹¹.

Where land, or an interest in land¹², acquired under the Defence of the Realm (Acquisition of Land) Act 1916, was immediately before its acquisition subject to a restrictive covenant which before 4 November 1920 had lawfully been contravened, and the land or interest is disposed of in pursuance of the powers conferred by that Act¹³, it may be disposed of free from the restriction imposed by the covenant¹⁴. Where, however, the covenant is one entered into for the protection and maintenance of any building scheme, or for the preservation of the amenities of any dwelling-house in the occupation of a person entitled to enforce the covenant, this provision does not apply unless the court¹⁵ otherwise directs, on the application of the occupying department¹⁶, and having regard to all the circumstance of the case¹⁷.

Where any such land or interest is disposed of free from such restriction, no one has the right of enforcing the covenant against the person to whom the land or interest is disposed of or his successors in title; but if at any time after such disposition any person who would have had to enforce the covenant establishes such a right, compensation must be paid to him, and on payment of compensation the right is absolutely discharged as against him and all persons deriving title through him¹⁸.

Where the land from which land acquired under the Defence of the Realm (Acquisition of Land) Act 1916 was severed is settled land¹⁹, the tenant for life, or person having the powers of a tenant for life with respect to that land, is deemed²⁰ to be, and always to have been, the person entitled to the settled land²¹.

The person by whom the right of pre-emption is or would for the time being be exercisable in respect of any land if a government department were offering that land for sale has power at any time to release that right so as to discharge in perpetuity the land, or any part of it to which the release relates, from all such right of pre-emption²².

1 As to the meaning of 'land' see PARA 517 note 1 ante.

2 As to the meaning of 'government department' see PARA 517 note 2 ante. Power to acquire land on behalf of the Crown was conferred by the Defence of the Realm (Acquisition of Land) Act 1916 s 3(1)-(6) (repealed).

3 Ibid s 5(1).

4 le in accordance with the Lands Clauses Acts. As to the Lands Clauses Acts see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq.

5 Defence of the Realm (Acquisition of Land) Act 1916 s 5(2).

6 As to the meaning of 'building' see PARA 517 note 1 ante.

7 If any person entitled to such pre-emption wishes to purchase any such lands, then, in the absence of agreement, the price or other consideration is to be determined in accordance with the Defence of the Realm (Acquisition of Land) Act 1916: see ss 5(5), 8 (repealed).

8 Ibid s 5(3) (amended by the Defence of the Realm (Acquisition of Land) Act 1920 s 2(1)).

9 Defence of the Realm (Acquisition of Land) Act 1916 s 5(4).

10 le ibid s 5(3), (4), (5) (s 5(3) as amended: see note 8 supra).

11 Ibid s 5(6).

12 For these purposes the exercise or enjoyment of any easement or right over or in relation to land is deemed to be possession of that easement or right: Defence of the Realm (Acquisition of Land) Act 1920 s 6 (amended by the Statute Law Revision Act 1927).

13 le the Defence of the Realm (Acquisition of Land) Act 1916 s 5 (as amended): see the text and notes 1-11 supra.

14 Defence of the Realm (Acquisition of Land) Act 1920 s 1(1).

15 Ibid s 1(1) refers to the Railway and Canal Commission, but the commission was abolished and its functions are now exercised and performed by the High Court: see the Railway and Canal Commission (Abolition) Act 1949 s 1(1)(a).

16 'Government in possession' and 'occupying department' mean, and are deemed always to have meant, the government department for the time being in possession of land, notwithstanding that the department in possession is not the department by which or on whose behalf possession was originally taken, but is in possession by virtue of a transfer from that department or from some other department to which possession has subsequently been transferred: Defence of the Realm (Acquisition of Land) Act 1920 s 3(1)(b).

Where the occupying department has created or purported to create any tenancy or other interest in the land of which it is in possession in favour of some other person, or has allowed any other person to use or occupy that land, the occupying department is deemed to have continued in possession of the land, notwithstanding the interest of, or the use or occupation by, that other person: s 3(1)(c).

Possession by an occupying department is not deemed to have been affected or prejudiced by reason of the land or any part of it at any time ceasing or having ceased to be used for the purpose for which possession was originally taken, or otherwise being or having been used for any other purpose: s 3(1)(d).

17 Ibid s 1(1) proviso.

18 Ibid s 1(2). Compensation must be paid in accordance with the Lands Clauses Act with respect to interests in lands which have been omitted to be purchased: see the Defence of the Realm (Acquisition of Land) Act 1920 s 1(2). In assessing the compensation, the official arbitrator must take into consideration any compensation which may have been paid or be payable in respect of the covenant (ie under the Defence of the Realm (Acquisition of Land) Act 1916 s 4: see PARA 519 ante); and any compensation payable under these provisions is paid out of moneys provided by Parliament, but the sum to be expended must not exceed £50,000: Defence of the Realm (Acquisition of Land) Act 1920 s 1(2) proviso. The official arbitrator is now the Lands Tribunal: see the Land Compensation Act 1961 s 1. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

19 le within the meaning of the Settled Lands Acts 1882 to 1890 (repealed). These Acts were replaced by the Settled Land Act 1925: see SETTLEMENTS vol 42 (Reissue) PARA 678.

20 le for the purposes of the Defence of the Realm (Acquisition of Land) Act 1916 s 5 (as amended) and the Defence of the Realm (Acquisition of Land) Act 1920 s 2.

21 Ibid s 2(2).

22 Ibid s 2(3).

UPDATE**520 Disposition of land acquired and right of pre-emption**

NOTE 18--Reference to the Lands Tribunal is now to the Upper Tribunal: Land Compensation Act 1961 s 1 (amended by SI 2009/1307).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(ii) The Defence of the Realm (Acquisition of Land) Acts 1916 and 1920/521. Maintenance of works and stopping up of highways.

521. Maintenance of works and stopping up of highways.

Where, in the exercise or purported exercise of any prerogative right of the Crown¹ or any powers conferred by or under any enactment relating to the defence of the realm, or by agreement, or otherwise, for purposes connected with the 1914-18 war, any railway, tramway, cable line or pipes have been laid along, across, over, or under any public highway², it is lawful after the termination of the war for the railway etc to continue to be used and maintained along, across, over or under the highway, subject to such conditions as the Secretary of State³, in the case of railways and tramways, and in other cases as the court⁴ may by order prescribe, after giving the local authority⁵ and the authority or person responsible for the maintenance of the highway or of any other railway or tramway laid on it an opportunity of being heard, and any such authority or person may apply to the Secretary of State or the court to make such an order⁶. However, where any such railway or tramway crosses the roadway on the level it is not lawful to use the crossing without the consent of the local authority⁷.

In the event of the use of any such railway or tramway being discontinued, the government department⁸ by which it was laid down or used must take up and remove the rails and restore the highway on which they are laid to the satisfaction of the authority or person responsible for the maintenance of that highway⁹.

Where in exercise of any such right or powers any public highway was closed, it may be kept closed but only if the consent of the court is obtained¹⁰. Before giving such consent the court must give to the local authority and the authority or person responsible for the maintenance of the highway an opportunity of being heard, and may require as a condition of its consent the provision of another highway in the place of the highway closed; and any person interested in any land¹¹ adjoining any highway so closed who suffers loss or damage in consequence of its closing is entitled to such compensation as, in default of agreement, may be determined in accordance with the Defence of the Realm (Acquisition of Land) Act 1916 to be the amount of the loss or damage¹².

Where any such railway etc has been laid along, across, over, or under any public highway, or a public highway has been closed, in pursuance of an agreement with, or subject to any undertaking given to, the authority or person responsible for the maintenance of the highway, nothing in these provisions authorises the continuance of the user of the railway etc or the continuance of the closing of the highway beyond the time specified in the agreement or undertaking without the consent of the responsible authority or person¹³.

1 As to the royal prerogative in time of war see PARAS 410-411 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 811. As to the royal prerogative generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq. The powers conferred by the Defence of the Realm (Acquisition of Land) Act 1916 are in addition to and not in derogation of any other right or power of the Crown: s 14.

2 As to public highways generally see HIGHWAYS, STREETS AND BRIDGES.

3 The Defence of the Realm (Acquisition of Land) Act 1916 s 6(1) refers to the Board of Trade, but the powers of the board under these provisions were transferred to the Minister of Transport, and then subsequently to the Secretary of State: see the Secretary of State for the Environment Order 1970, SI 1970/1681 (lapsed). As to the Board of Trade generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505; TRADE AND INDUSTRY vol 97 (2010) PARA 802. As to the Secretary of State see PARA 413 note 14 ante.

4 The Defence of the Realm (Acquisition of Land) Act 1916 s 6(1) refers to the Railway and Canal Commission, but the commission was abolished and its functions are now exercised and performed by the High Court: see the Railway and Canal Commission (Abolition) Act 1949 s 1(1)(a).

5 'Local authority' means, in the case of a borough or urban district, the council of the borough or urban district, and elsewhere the county council: Defence of the Realm (Acquisition of Land) Act 1916 s 6(4).

6 Ibid s 6(1).

7 Ibid s 6(1) proviso. Such consent has been required since the expiration of two years from the termination of the 1914-18 war: see s 6(1) proviso. If any person considers that the consent of a local authority under this proviso has been unreasonably withheld, he may appeal to the Secretary of State (see note 3 supra) whose decision is final and has effect as if it were a decision of the authority; provided that the Secretary of State may, before considering any such appeal, require the appellant to deposit a specified sum to cover the costs of appeal: see the Defence of the Realm (Acquisition of Land) Act 1920 s 4(2).

8 As to the meaning of 'government department' see PARA 517 note 2 ante.

9 Defence of the Realm (Acquisition of Land) Act 1916 s 6(2).

10 See ibid s 6(3). Such consent has been required since the expiration of two years from the termination of the 1914-18 war: see s 6(3).

11 As to the meaning of 'land' see PARA 517 note 1 ante.

12 Defence of the Realm (Acquisition of Land) Act 1916 s 6(3).

13 Ibid s 6(5). See also *Secretary of State for War v Middlesex County Council* (1923) 39 TLR 357, where the court refused to close a public footpath over land which had been acquired.

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522. Application of building laws.

Any street, building¹, or work which has been formed, erected, or constructed otherwise than in accordance with statutory provisions or byelaws or regulations made under them on any land² which has been acquired permanently³ must, unless the authority by which such provisions are enforced consents to their continuance, either be altered so as to comply with such provisions or be discontinued or removed within such reasonable time, not being less than two years, after that land or building has ceased to be occupied by a government department as that authority may order⁴. The owner has power to enter and carry out any works without the consent of any other person, and if he fails to comply with such order the authority may remove any such building or work and recover the expense incurred from the owner⁵.

If any person feels aggrieved by the neglect or refusal of the authority to give its consent, or by the conditions on which the consent is given, or as to the time within which such discontinuance or removal is ordered, he may appeal to the Secretary of State for Health⁶, whose decision is final and has effect as if it were a decision of the authority⁷.

- 1 As to the meaning of 'building' see PARA 517 note 1 ante.
- 2 As to the meaning of 'land' see PARA 517 note 1 ante.
- 3 le under the Defence of the Realm (Acquisition of Land) Act 1916 s 3 (as amended): see PARA 518 ante.
- 4 Ibid s 11(1). As to the meaning of 'government department' see PARA 517 note 2 ante.
- 5 Ibid s 11(1).
- 6 Ibid s 11(2) refers to the Local Government Board, but the powers of the board are now exercised by the Secretary of State for Health. As to the Secretary of State for Health see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 463 et seq.
- 7 Defence of the Realm (Acquisition of Land) Act 1916 s 11(2). Before considering any such appeal, the Secretary of State may require the appellant to deposit a specified sum to cover the costs of appeal: see s 11(2).

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523. Compensation.

All compensation and purchase money payable by a government department¹ under the Defence of the Realm (Acquisition of Land) Act 1916, and all other expenses incurred by any government department under that Act, are to be defrayed out of money provided by Parliament².

Where consideration has been given or an advance made by the state for the erection, construction, or making of any building³, work, or improvement on, over or under any land⁴ for purposes connected with the 1914-18 war, or where any money which would otherwise have been payable to the state has with the consent of a government department been applied towards the erection, construction, or making of any such building, work, or improvement, then that building, work, or improvement is deemed to have been erected, constructed, or made wholly or partly, as the case may be, at the expense of the state⁵.

- 1 As to the meaning of 'government department' see PARA 517 note 2 ante.
- 2 Defence of the Realm (Acquisition of Land) Act 1916 s 9.
- 3 As to the meaning of 'building' see PARA 517 note 1 ante.
- 4 As to the meaning of 'land' see PARA 517 note 1 ante.
- 5 Defence of the Realm (Acquisition of Land) Act 1916 s 12(2).

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524. Government department certificate.

A certificate by any government department¹:

- 135 (1) that possession has been taken of any land² for purposes connected with the 1914-18 war; or
- 136 (2) that the department is in possession of such land or is the occupying department³; or
- 137 (3) that a railway or tramway has been laid along, across, over, or under a public highway⁴, or that a public highway has been closed, in the exercise of any prerogative right⁵ of the Crown, or any powers conferred by or under any enactment relating to the defence of the realm for purposes connected with the 1914-18 war,

is prima facie evidence of the facts stated⁶.

1 As to the meaning of 'government department' see PARA 517 note 2 ante.

2 As to the meaning of 'land' see PARA 517 note 1 ante. For these purposes, the exercise or enjoyment of any easement or right over or in relation to land is deemed to be possession of that easement or right: see the Defence of the Realm (Acquisition of Land) Act 1920 s 6 (amended by the Statute Law Revision Act 1927).

3 For the meaning of 'occupying department' see PARA 520 note 16 ante.

4 As to public highways generally see HIGHWAYS, STREETS AND BRIDGES.

5 As to the royal prerogative in time of war see PARAS 410-411 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 811. As to the royal prerogative generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq. The powers conferred by the Defence of the Realm (Acquisition of Land) Act 1916 are in addition to and not in derogation of any other right or power of the Crown: s 14.

6 Ibid s 10 (amended by the Statute Law (Repeals) Act 1973).

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(iii) The Requisitioned Land and War Works Acts 1945 and 1948

525. In general.

Most of the powers conferred on government departments and the Crown relating to the treatment of requisitioned land and war works in connection with the 1939-45 war have long since expired¹. However, certain provisions² directed to empowering the acquisition of easements³ and restrictive rights under the Defence Acts⁴ and to the acquisition under those Acts of the surface of land without underlying strata or the acquisition of reversionary interests were made permanent⁵, and may be applied for the purpose of the acquisition of land for oil installations⁶. Other subsisting provisions of the legislation confer power to defray the cost of the rehabilitation of land in certain cases⁷, and confer power on a minister⁸ to acquire any land by agreement under the Defence Acts with a view to the exchange of that land for other land to be acquired under those Acts⁹.

The powers conferred by the Requisitioned Land and War Works Act 1945 are in addition to, and not in derogation of, any powers exercisable by virtue of any other Act or at common law¹⁰.

1 See eg the Requisitioned Land and War Works Act 1945 Pt I (ss 1-3) (repealed), Pt II (ss 4-14) repealed; and the Requisitioned Land and War Works Act 1948 (partly repealed and extensively amended).

2 See the Requisitioned Land and War Works Act 1945 ss 33, 34 (both as amended): see PARA 530 post.

3 As to the meaning of 'easement' see PARA 530 note 5 post.

4 The 'Defence Acts' means any of the provisions of the Defence Acts 1842 to 1935, as amended, extended or applied by or under any enactment, including the Requisitioned Land and War Works Act 1945, and includes the provisions of the Lands Clauses Consolidation Acts Amendment Act 1860 s 7, and of the Militia (Lands and Buildings) Act 1873 s 7: Requisitioned Land and War Works Act 1945 s 59(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II). As to the Defence Acts 1842 to 1935, and as to acquisition of land for defence purposes, see also ARMED FORCES vol 2(2) (Reissue) PARA 125.

5 See the Requisitioned Land and War Works Act 1948 s 1(3) (repealed), which made permanent the Requisitioned Land and War Works Act 1945 ss 33, 34 (both as amended). As to provisions consequential on ss 33, 34 (both as amended) see ss 36-39 (as amended); and PARA 530 post.

6 See the Land Powers (Defence) Act 1958 s 13, Sch 2 Pt II paras 12, 13(h) (amended by the Post Office Act 1969 s 137(1), Sch 8 Pt II); and PARA 529 post.

7 See the Requisitioned Land and War Works Act 1945 s 52; and the Requisitioned Land and War Works Act 1948 s 6, Schedule para 10. These provisions are repealed by the Housing and Planning Act 1986 ss 48(1)(a), 49(2), Sch 12 Pt III in relation to undertakings given after 7 January 1987. See also the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No 2) Order 1951, SI 1951/753 (amended by SI 1951/1900).

8 For the meaning of 'minister' see PARA 510 note 9 ante.

9 Where a minister proposes to acquire any land under the Defence Acts, he may acquire any land by agreement with a view to its exchange for all or any of the first-mentioned land; provided that, where the first-mentioned land consists of or includes the whole or any part of any common to which the public have rights of access or of any open space, this power is extended so as to authorise the purchase of land with a view to its being substituted for the first-mentioned land otherwise than by way of exchange: Requisitioned Land and War Works Act 1945 s 53(1). 'Common' includes any land subject to be inclosed under the Inclosure Acts 1845 to 1882, and any town or village green; and 'open space' means any land laid out as a public garden or used for the purposes of public recreation, or land being a disused burial ground: Requisitioned Land and War Works Act 1945 s 59(1).

Where a minister provides land in substitution for land acquired by him under the Defence Acts which is or forms part of a common, open space or fuel or field garden allotment, he may by order provide for vesting the first-mentioned land in the persons in whom the second-mentioned land was vested, subject to the same rights, trusts and incidents as attached to the second-mentioned land; provided that where the land is provided otherwise than by way of exchange, the persons in whom the land is to be vested must be such as may be specified in the order and the rights, trusts and incidents to which the land is to be subject must be such as may be so specified, being rights, trusts and incidents which in the opinion of the minister are as nearly as may be the same, so far as regards the rights of the public, as those which attached to the land acquired: Requisitioned Land and War Works Act 1945 s 53(2). 'Fuel or field garden allotment' means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act: Requisitioned Land and War Works Act 1945 s 59(1).

See also ARMED FORCES vol 2(2) (Reissue) PARA 125; COMMONS vol 13 (2009) PARA 483.

10 Ibid s 59(8).

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526. Provisions affecting highways and railways.

Where any highway¹ has been stopped up or diverted in the exercise of emergency powers², the Secretary of State³ may, if he is satisfied that in the public interest it is necessary or

expedient to do so, by order authorise the permanent stopping up or diversion of the highway⁴. Such an order may provide for all or any of the following:

- 138 (1) for requiring, as a substitute for any highway stopped up under the order, the provision or improvement of another highway or other highways⁵;
- 139 (2) for directing that any highway to be provided or improved, or any highway provided or improved before the making of the order, as a substitute for any highway stopped up under the order, is repairable by the inhabitants at large, and for specifying the authority which is to be the relevant highway authority⁶;
- 140 (3) for directing that any highway to be provided or improved, or any highway provided or improved before the making of the order, as a substitute for a trunk road stopped up under the order is itself a trunk road for all or any of the purposes of the Highways Act 1980⁷;
- 141 (4) for the retention or removal of any cables, wires, mains or pipes placed along, across, over or under the stopped up or diverted highway, and for the extinction, modification or preservation of any rights as to the use or maintenance of those cables etc⁸;
- 142 (5) if any highway other than the original highway is to be or has been provided or improved, or if the original highway is to be permanently diverted, for authorising or requiring the provision of cables, wires, mains or pipes laid along, across, over or under that other highway, or, as the case may be, the highway as diverted, in lieu of any cables etc removed from the original highway, and for conferring rights as to the use or maintenance of cables etc so provided⁹;
- 143 (6) for requiring out of moneys provided by Parliament or by specified authorities or persons: (a) the payment of, or the making of contributions in respect of, the cost of doing any work required to be done by the order or any increased expenditure to be incurred which is ascribable to the doing of any such work or to the provision or improvement, before the making of the order, of any highway as a substitute for any highway stopped up under the order¹⁰; or (b) the repayment of, or the making of contributions in respect of, any compensation paid by the highway authority in respect of restrictions¹¹ as respects any highway stopped up or diverted under the order¹².

An order may contain such consequential, incidental and supplemental provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order, including provisions authorising the compulsory acquisition of land¹³.

Where, in the exercise of emergency powers or, for war purposes¹⁴, by agreement or otherwise, any railway or tramway or any cable, wire, main or pipe has been placed along, across, over or under any highway, the Secretary of State may, if he is satisfied that in the public interest it is necessary or expedient to do so, by order authorise the railway etc to be used and maintained along, across, over or under the highway, unless and until other provision is made by or under any Act, subject, however, to such conditions and limitations, if any, as may be specified in the order¹⁵.

Any such order may contain such consequential, incidental and supplemental provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order¹⁶.

1 As to highways generally see HIGHWAYS, STREETS AND BRIDGES.

2 For the meaning of 'emergency powers' see PARA 509 note 10 ante.

3 The Requisitioned Land and War Works Act 1945 refers to the Minister of War Transport, but his functions are now exercised by the Secretary of State: see the Secretary of State for the Environment Order 1970, SI 1970/1681 (lapsed). As to the Secretary of State see PARA 413 note 14 ante.

4 Requisitioned Land and War Works Act 1945 s 15(1). See also the Requisitioned Land and War Works Act 1948 s 3(1). The powers conferred by the Requisitioned Land and War Works Act 1945 ss 15, 16 are limited (see s 20(1)) to expire two years after the end of the war period, but this limit does not apply to any varying or revoking order made under these provisions by virtue of the Land Powers (Defence) Act 1958 s 9(1) (as amended); see s 9 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 809. For the meaning of the 'war period' see PARA 509 note 10 ante.

5 Requisitioned Land and War Works Act 1945 s 15(2)(a).

6 Ibid s 15(2)(b).

7 Ibid s 15(2)(c).

8 Ibid s 15(2)(d).

9 Ibid s 15(2)(e).

10 Ibid s 15(2)(f)(i).

11 Imposed under the Restriction of Ribbon Development Act 1935 ss 1, 2 (both repealed).

12 Requisitioned Land and War Works Act 1945 s 15(2)(f)(ii).

13 Ibid s 15(3).

14 'War purposes' means any purposes connected with any war in which the Crown is engaged during the war period, whether or not at the relevant time that war had begun: ibid s 59(1).

15 Ibid s 16(1).

16 Ibid s 16(2).

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527. Procedure and orders relating to highways.

Before making an order¹, the Secretary of State² must publish his proposals by causing notice:

- 144 (1) to be advertised in two or more newspapers circulating in the locality in which the highways³ to which the proposals relate are or will be situated⁴; and
- 145 (2) to be sent to every local authority⁵ in whose area any such highway is or will be situated and to any water, sewerage, gas⁶ or electricity undertakers having any cables, wires, mains or pipes laid along, across, over or under any such highway⁷; and
- 146 (3) to be sent to the Environment Agency where that agency has any mains or pipes laid along, across, over or under any such highways⁸; and
- 147 (4) to be displayed in a prominent position at the ends of so much of any highway as is proposed to be stopped up or diverted under the order⁹; and
- 148 (5) in the case of an order authorising the compulsory acquisition of land, to be served on every owner, lessee or occupier (except tenants for a period of a month or less) of any of the land proposed to be compulsorily acquired¹⁰.

The notice must specify the place where copies of a draft of the proposed order may be obtained, and must state that the order will be made unless, within such period (not being less than three months from the date of the publication) as may be specified in the notice, written

notice of objection to the order is given by any person to the Secretary of State¹¹. Such an order may not, however, be questioned in any legal proceedings and becomes operative on the date on which the notice is last published¹². The order must comply with the published proposals¹³.

No order authorising the permanent stopping up or diversion of a highway may be made after the highway has ceased to be temporarily stopped up or diverted and no order authorising the permanent use and maintenance along, across, over or under a highway of a railway, tramway, cable, wire, main or pipe may be made after the railway etc has been abandoned¹⁴.

After making the order, the Secretary of State must publish a notice that the order has been made and that copies of it may be obtained from a place specified in the notice on payment of a specified sum¹⁵.

If any one wishes to question the validity of the order, or of any provision contained in it, on the ground that it is not within the statutory powers or that the statutory requirements have not been complied with in relation to the order, he may, within six weeks from the date on which the notice is last published in a newspaper, make an application to the High Court¹⁶.

1 Ie under the Requisitioned Land and War Works Act 1945 Pt III (ss 15-22) (as amended): see PARA 526 et seq ante.

2 As to the transfer of functions to the Secretary of State see PARA 526 note 3 ante. As to the Secretary of State see PARA 413 note 14 ante.

3 As to highways generally see HIGHWAYS, STREETS AND BRIDGES.

4 Requisitioned Land and War Works Act 1945 s 17(1)(a).

5 'Local authority' means the council of a county, borough or district, or the Common Council of the City of London: *ibid* s 59(1) (amended by the Statute Law (Repeals) Act 1976). For the purposes of the Requisitioned Land and War Works Act 1945 s 17(1), 'local authority' includes a parish council and the parish meeting of a rural parish not having a separate parish council: s 17(1).

6 The reference to a public gas supplier has effect as if it were a reference to a gas transporter: see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805.

7 Requisitioned Land and War Works Act 1945 s 17(1)(b) (amended by the Water Act 1989 s 190(1), Sch 25 para 8).

8 Requisitioned Land and War Works Act 1945 s 17(1)(bb) (added by the Water Act 1989 Sch 25 para 8). The Environment Agency has replaced the National Rivers Authority: see the Environment Act 1995 ss 1-3 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

9 Requisitioned Land and War Works Act 1945 s 17(1)(c).

10 *Ibid* s 17(1)(d). Any notice required to be served under s 17(1)(d) may be served either:

15 (1) by delivering it to the person on whom it is to be served (s 17(3)(a)); or

16 (2) by leaving it at the usual or last known place of abode of that person (s 17(3)(b)); or

17 (3) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode (s 17(3)(c)); or

18 (4) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at the registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office (s 17(3)(d)); or

19 (5) if it is not practicable after reasonable inquiry to ascertain the name or address of the person on whom it should be served, by addressing it to him by the description of 'owner' or 'lessee' or 'occupier' of the land (describing it) to which it relates and by delivering it to some person on the land, or, if there is no person on the land to whom it can be delivered, by displaying it in a prominent position on the land (s 17(3)(e)).

11 *Ibid* s 17(2).

12 Ibid s 19(3).

13 See ibid s 20(1).

14 Ibid s 20(2).

15 Ibid s 19(1) (amended by the Decimal Currency Act 1969 s 10(1)). The sum must not exceed a specified amount: see the Requisitioned Land and War Works Act 1945 s 19(1).

16 Ibid s 19(2). On any such application the court: (1) may by an interim order suspend the operation of the order or any provision contained in it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings (s 19(2)(a)); and (2) if satisfied that the order or any provision contained in it is not within these statutory powers or that the interests of the applicant have been substantially prejudiced by any requirement of these provisions not having been complied with, may quash the order or any provision contained in it, either generally or in so far as it affects any property of the applicant (s 19(2)(b)).

UPDATE

527 Procedure and orders relating to highways

TEXT AND NOTE 10--Now head (5) in the case of an order authorising the compulsory acquisition of land, to be served on every person (a) who is an owner, lessee, tenant or occupier of any land proposed to be compulsorily acquired; (b) to whom the minister would, if proceeding under the Compulsory Purchase Act 1965 s 5(1), be required to give a notice to treat; or (c) who the minister thinks is likely to be entitled to make a claim for compensation under s 10 if the order is confirmed and the compulsory acquisition takes place, so far as he is known to the minister after making a diligent inquiry: 1945 Act s 17(1)(d) (substituted by SI 2007/1519).

NOTE 10--Head (5) after 'lessee' read 'or tenant; after 'occupier' read 'or person interested: 1945 Act s 17(1)(e) (amended by SI 2007/1519).

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528. Maintenance and use of works and continuance in possession; government oil pipelines.

Where government war works¹ have been constructed on any land², any minister may maintain and use, or authorise the maintenance and use of, those works for the purposes of the public service or for any purpose for which they were maintained or used in the exercise of emergency powers³. In connection with the use of any works or land under this provision any person having the use of the works or land may continue to exercise and enjoy all such rights and advantages as, immediately before the use began, were, by agreement or otherwise, being exercised or enjoyed in connection with the use of the works or land for war purposes by the person then having the use of it, including rights and advantages as to the taking of water, whether for the purposes of a water undertaking⁴ or for other purposes⁵. In relation to government oil pipelines⁶ and accessory works, these provisions⁷ have permanent effect, subject to certain provisions⁸.

The powers conferred⁹ include power to maintain and use any line or accessory works, or authorise the use of them for any purpose for which they are suitable¹⁰.

A minister may remove any main or pipe or part of a main or pipe, being a government oil pipeline, or any accessory works, and may replace anything previously removed; and these provisions¹¹ apply to any replacement as if it had been the original thing removed¹². If, in pursuance of an agreement with a minister, a government oil pipeline is diverted or any accessory works are moved to a new site, the provisions apply to the line as diverted, or to the works on the new site, as the case may be, as if it or they had been the original line or works¹³.

If, without the consent of a minister, any building or structure is erected over a government oil pipeline or accessory works or the site of such a line or works, or so near to them as to obstruct the use of the line or works or access to them or to the site, a minister may cause the building or structure to be removed and may recover the cost of the removal from the person by whom the building or structure was erected¹⁴. Where, however, rights are for the time being exercisable by a minister¹⁵ with respect to any oil pipeline or accessory works¹⁶, there are restrictions on the activities that may be carried out in the vicinity of the pipeline or works without the consent of that minister¹⁷; and when these restrictions take effect as respects any land the above provisions¹⁸ cease to apply to that land¹⁹. The restrictions are not effective unless registered in the appropriate local land charges register²⁰. If, in consequence of the restrictions, the value of any subsisting interest in land is depreciated, then compensation equal to the amount of the depreciation is payable by the minister concerned²¹.

Any person who without lawful authority tampers with, alters or removes a government oil pipeline or accessory works is liable on summary conviction to a penalty²².

In respect of the exercise of these powers²³ compensation is payable by the Secretary of State²⁴. Where the value of any land is diminished²⁵, compensation for the diminution is payable in the form of a lump sum of such amount as may be agreed between the Secretary of State and the persons interested in the land²⁶ or, in default of agreement, as may be determined by arbitration in the prescribed manner; and this compensation is divisible among those persons in such shares as they may agree, or, in default of agreement, as may be determined by arbitration²⁷. Where in exercise of any power of use, maintenance, removal or replacement of a government oil pipeline or accessory works²⁸ a person suffers loss by reason of damage to crops or other growing things, stock, chattels or any land or buildings or works on, under or over land, he is entitled to compensation in respect of the damage of such amount as may be agreed between the Secretary of State and the person in question or, in default of agreement, as may be determined by arbitration²⁹.

The Treasury may by regulations³⁰ require, as a condition of the payment of compensation³¹:

- 149 (1) that except in such circumstances as may be prescribed, a claim must be made in the prescribed form and manner and within such period as may be determined by or under the regulations³²; and
- 150 (2) that the prescribed documents of title to interests in land must be indorsed in the prescribed manner and that the prescribed evidence must be produced of the indorsement,

and the registration requirement³³ does not apply where evidence of an indorsement has been produced in accordance with the regulations³⁴.

Where a pipeline is diverted, or works are moved³⁵, the registration requirement³⁶ does not apply to the line as diverted or to the works on the new site, but the rights conferred by the above provisions³⁷, as respects the land on which the line as diverted and any such works are constructed, are a local land charge; and for the purposes of the Local Land Charges Act 1975 the minister maintaining and using, or authorising the maintenance and use of, the line or works is to be treated as the originating authority as respects that charge³⁸. Such rights registered in a local land charges register are a local land charge, but certain provisions of the Local Land Charges Act 1975³⁹ do not apply; and a certificate setting out the result of an official

search of the appropriate local land charges register is, as respects any pipeline or accessory works, conclusive of the question whether, at the time of the issue of the certificate, registrable⁴⁰ rights were registered⁴¹.

Any person authorised by a minister may enter upon any land of which the minister is not in possession, for the purpose of exercising any of these powers⁴² or of restoring land where a government oil pipeline or accessory works are abandoned or of inspecting any such land or works⁴³. Except in a case of emergency or for the purpose of inspection by a person producing, if required, written evidence of his authority to do so, entry upon any land may not be demanded as of right unless reasonable notice of the intended entry has been served on the occupier of the land in the required manner⁴⁴; and where any land has been entered upon, for a purpose other than inspection only, without notice being served on the occupier of the land, the minister must forthwith cause notice of the entry to be served on the occupier in the required manner⁴⁵.

The Treasury may make regulations: (a) for the protection of persons affected by the maintenance and use of government oil pipelines and accessory works, and in particular for requiring the minister or other person entitled to use them to keep any such line and works in good repair, to take such steps as may be prescribed for restoring land where the line or works are abandoned, and to indemnify persons against loss or damage caused by any failure to keep the line or works in good repair, and for relieving statutory undertakers and other persons of liabilities or obligations arising in consequence of any such failure or any exercise of the powers⁴⁶; (b) for requiring notice to be given where a government oil pipeline or accessory works are abandoned, and for discontinuing the operation of the above provisions⁴⁷ where such a notice is given⁴⁸; (c) for applying in relation to government oil pipelines passing under highways the provisions relating to the breaking-up of highways for the purposes of repairing pipes⁴⁹ and for excluding in relation to government oil pipelines the provisions⁵⁰ relating to retention of, inter alia, pipes on highways⁵¹.

1 'Government war work' means work done during the war period for war purposes by or by arrangement with a minister, or under emergency powers (Requisitioned Land and War Works Act 1945 s 59(1)); and 'government war works' includes, and is deemed always to have included, any oil pipeline or accessory works which is completed before the end of 1958 and which is laid, installed or constructed by or under the authority of a minister in pursuance of the Defence (General) Regulations 1939, SR & O 1939/927, reg 50 (revoked) or in pursuance of an agreement in such circumstances that if the agreement had not been made the like pipeline or works could have been laid, installed or constructed in pursuance of that regulation (Land Powers (Defence) Act 1958 s 12(1)). 'Works' includes buildings, structures and improvements (and, in particular, underground works and telegraphic lines); and references to the construction of works are to be construed accordingly: Requisitioned Land and War Works Act 1945 s 59(1). For the meaning of 'war period' see PARA 509 note 10 ante; for the meaning of 'war purposes' see PARA 526 note 14 ante; and for the meaning of 'minister' see PARA 510 note 9 ante.

2 For the meaning of the 'doing of work on land' see PARA 510 note 2 ante.

3 Requisitioned Land and War Works Act 1945 s 28(1). For the meaning of 'emergency powers' see PARA 509 note 10 ante.

4 As to water undertakings and water undertakers see WATER AND WATERWAYS vol 100 (2009) PARAS 134-151.

5 Requisitioned Land and War Works Act 1945 s 28(3)(a).

6 'Government oil pipeline' means any government war works being the whole or part of a main or pipe installed for the transmission of petroleum: Requisitioned Land and War Works Act 1948 s 12(3). See also note 1 supra.

7 Ie the Requisitioned Land and War Works Act 1945 s 28(1), (3)(a). In general, s 28 ceased to have effect at the end of 1960 by virtue of s 30 (repealed).

8 Requisitioned Land and War Works Act 1948 s 12(1). Section 12 does not apply after 31 December 1960 to any pipeline or accessory works, unless the rights conferred by s 12(1) have been registered in the appropriate local land charges register; and on any application being made for that purpose to the authority keeping that

register that authority must register the rights accordingly: s 14(1) (amended by the Land Powers (Defence) Act 1958 s 12(2); and the Local Land Charges Act 1975 ss 12(2), 17(2), 19(1), Schs 1, 2).

In relation to works in exercise of the powers conferred by the Requisitioned Land and War Works Act 1948 s 12 (as amended), certain provisions of the New Roads and Street Works Act 1991 are modified with regard to plans and to avoid an unacceptable diversion or change of a government oil pipeline: see the Land Powers (Defence) Act 1958 s 18A (added by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt IV para 100). As to street works generally see HIGHWAYS, STREETS AND BRIDGES.

9 Ie by the Requisitioned Land and War Works Act 1945 s 28 (as amended).

10 Requisitioned Land and War Works Act 1948 s 12(2).

11 Ie the Requisitioned Land and War Works Act 1945 s 28 (as amended); and the Requisitioned Land and War Works Act 1948.

12 Ibid s 12(4).

13 Ibid s 12(5).

14 Ibid s 12(6).

15 For the purposes of the Land Powers (Defence) Act 1958, 'minister', except where the reference is to a particular minister, means any Minister of the Crown: s 25(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II).

16 Ie under the Requisitioned Land and War Works Act 1948 s 12(1) or under a wayleave order. As to wayleave orders see PARA 529 post. For the meaning of 'oil pipeline' for the purposes of the Land Powers (Defence) Act 1958 see PARA 529 note 5 post. As to acquisition of land and compensation see also ARMED FORCES vol 2(2) (Reissue) PARA 125.

17 See the Land Powers (Defence) Act 1958 s 16(1). The minister may, if he thinks fit, direct that anything done in contravention of the restrictions is to be deemed to have been done with his consent: see s 16(4). The minister may take remedial action if the restrictions are contravened (see s 16(2)); and any expenses so incurred are recoverable from the occupier of the land on which the contravention was committed (see s 16(3)). 'Occupier', in relation to any land which is not occupied, means the person for the time being entitled to possession of that land: s 25(1).

18 Ie the Requisitioned Land and War Works Act 1948 s 12(6): see the text and note 14 supra.

19 Land Powers (Defence) Act 1958 s 16(6). For the purposes of the Land Powers (Defence) Act 1958, 'land' includes land covered by water: s 25(1).

20 The restrictions do not take effect until notice of the restrictions is registered in the appropriate local land charges register; and, in relation to an owner, lessee or occupier of that land at the time when the application for registration is made, they do not take effect unless notice has been served on him: see *ibid* s 17(2) (amended by the Local Land Charges Act 1975 Sch 1). 'Owner' means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement the unexpired term of which exceeds three years: Land Powers (Defence) Act 1958 s 25(1). As to registration of restrictions generally see s 17 (amended by the Local Land Charges Act 1975 Schs 1, 2; and the Local Government Act 1972 s 272(1), Sch 30). As to the service of notice see the Land Powers (Defence) Act 1958 s 23.

21 See *ibid* s 18(2). However, compensation is not payable under s 18(2) if compensation in respect of that land has been paid under the Requisitioned Land and War Works Act 1948 s 13 (as amended) (see the text and notes 23-32 *infra*) and it is shown that the whole or part of that compensation is attributable to the provisions of s 12(6) (see the text to note 14 *supra*): Land Powers (Defence) Act 1958 s 18(2) proviso. The Treasury may by regulations require, as a condition of the payment of compensation under s 18, that a claim must be made in a prescribed form and manner and within a certain period: see s 18(4). The power to make regulations is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 24(1). See the Government Oil Pipe-lines (No 2) Regulations 1959, SI 1959/724. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Any dispute as to a right of compensation under the Land Powers (Defence) Act 1958 s 18, or as to the amount of compensation, must be determined by the Lands Tribunal: s 18(5). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 *et seq*.

22 Requisitioned Land and War Works Act 1948 s 12(7) (amended by the Criminal Law Act 1977 s 31(6); and the Criminal Justice Act 1982 s 46). The penalty is a fine not exceeding level 1 on the standard scale: see the Requisitioned Land and War Works Act 1948 s 12(7) (as so amended). As to the standard scale see PARA 432 note 21 ante.

23 Ie the powers conferred by *ibid* s 12 (as amended).

24 Ie in accordance with the provisions of *ibid* s 13 (as amended): s 13(1) (s 13(1), (2), (6) amended by the Minister of Works (Change of Style and Title) Order 1962, SI 1962/1549). This provision refers to the Minister of Public Buildings and Works, but the functions are now the responsibility of the Secretary of State: see the Secretary of State for the Environment Order 1970, SI 1970/1681 (lapsed). As to the Secretary of State see PARA 413 note 14 ante.

25 Ie by the coming into operation of the Requisitioned Land and War Works Act 1948 s 12.

26 References in *ibid* s 13(2) (as amended) to persons interested in land do not include persons who fail to make a claim required by regulations: see s 13(7). As to the regulations see the text and notes 30-32 *infra*.

27 *Ibid* s 13(2) (as amended: see note 24 *supra*). In assessing this compensation, regard must be had to the rights to compensation conferred by s 13(6) (as amended) (see the text and notes 28-29 *infra*), and to ss 14-20 (as amended) and to the provisions of regulations made under the Requisitioned Land and War Works Act 1948: s 13(3). Disputes under s 13(2) or (6) (as amended) are to be determined by the Lands Tribunal: s 17(1); and see the Government Oil Pipe-lines Regulations 1959, SI 1959/715, reg 7.

The right to compensation conferred by the Requisitioned Land and War Works Act 1948 s 13(2) (as amended) is, as respects any period after 19 February 1948, in substitution for any right to compensation under the Compensation (Defence) Act 1939 s 3(2) (see PARA 510 ante); and interest on any share of compensation under the Requisitioned Land and War Works Act 1948 s 13(2) (as amended), at the like rate as is for the time being payable on compensation under the Compensation (Defence) Act 1939, runs as from 19 February 1948 and is payable at the time when the share is paid: Requisitioned Land and War Works Act 1948 s 13(4).

Where, at 7 July 1958, rights conferred by s 12(1) have not been registered (see note 8 *supra*) and no evidence of indorsement of documents of title has been produced (see the text and note 34 *infra*), the date when rights to compensation under the Requisitioned Land and War Works Act 1948 Act are substituted for rights under the Compensation (Defence) Act 1939 is 7 July 1958 or the date of the completion of the pipeline or works in question, whichever is the later: see the Land Powers (Defence) Act 1958 s 12(3).

Where under any agreement made before 7 July 1958 payments (whether referred to as compensation, rent or otherwise) are to be made in respect of a pipeline or works to which s 12(3) applies, and any such payments become payable in respect of a period after that date, the right to those payments must be taken to be in substitution for the right to any corresponding payment of compensation in respect of that period under the Requisitioned Land and War Works Act 1948 s 13 (as amended): Land Powers (Defence) Act 1958 s 12(4).

28 Ie conferred by the Requisitioned Land and War Works Act 1948 s 13(5).

29 *Ibid* s 13(6) (as amended: see note 24 *supra*). The Railways Clauses Consolidation Act 1845 ss 78-85 (as originally enacted) (which restrict the working of minerals, subject to compensation) apply in relation to any government oil pipeline or accessory works with the substitution: (1) for references to the railway of references to the pipeline or works; (2) for references to the company of references to the minister or other person entitled to use the pipeline or works; and (3) for references to the special Act of references to the Requisitioned Land and War Works Act 1945 s 28: Requisitioned Land and War Works Act 1948 s 15(3). As to determination in default of agreement see note 27 *supra*.

30 The Treasury may by regulations prescribe anything authorised or required by the Requisitioned Land and War Works Act 1948 to be prescribed: s 17(1). Any such power to make regulations is exercisable by statutory instrument, which is subject to annulment by resolution of either House of Parliament: s 17(2), (3).

31 Ie payment of compensation under *ibid* s 13(2) (as amended) (see the text and notes 25-27 *supra*).

32 *Ibid* s 13(7).

33 See note 8 *supra*.

34 Requisitioned Land and War Works Act 1948 s 14(2).

35 See *ibid* s 12(5).

36 See note 8 *supra*.

- 37 Ie the Requisitioned Land and War Works Act 1948 s 12 (as amended) (see the text and notes 1-22 supra).
- 38 Ibid s 14(3) (amended by the Local Land Charges Act 1975 Sch 1).
- 39 Ie the Local Land Charges Act 1975 ss 5(2), 10 (as amended).
- 40 Ie registrable under the Requisitioned Land and War Works Act 1948 s 14(1): see the text and note 8 supra.
- 41 Ibid s 14(4) (substituted by the Local Land Charges Act 1975 Sch 1).
- 42 Ie powers conferred by the Requisitioned Land and War Works Act 1948 s 12 (as amended): see the text and notes 1-22 supra.
- 43 Ibid s 15(1). The provisions of s 13(6), (7) (as amended) (see the text and notes 28-32 supra) apply in relation to powers conferred by s 15(1) as they apply to the powers mentioned in s 13(6) (as amended): s 15(2).
- 44 Ibid s 15(1)(i).
- 45 Ibid s 15(1)(ii).
- 46 Ie the powers conferred by ibid s 12 (as amended) or s 15 (as amended): see s 15(4)(a).
- 47 Ie ibid s 12 (as amended) or s 15 (as amended), and regulations made under s 15(4) (as amended).
- 48 See ibid s 15(4)(b).
- 49 Ie the Water Industry Act 1991 s 158 (as amended): see WATER AND WATERWAYS vol 101 (2009) PARA 462.
- 50 Ie the Requisitioned Land and War Works Act 1945 s 16 (see PARA 526 ante).
- 51 See the Requisitioned Land and War Works Act 1948 s 15(4)(c) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 5).

UPDATE

528 Maintenance and use of works and continuance in possession; government oil pipelines

NOTES 21, 27--References to the Lands Tribunal are now to the Upper Tribunal: Land Powers (Defence) Act 1958 s 18(5); SI 1959/715 reg 7 (amended by SI 2009/1307).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(iii) The Requisitioned Land and War Works Acts 1945 and 1948/529. Acquisition of land for oil installations; wayleave orders for oil pipelines and accessory works.

529. Acquisition of land for oil installations; wayleave orders for oil pipelines and accessory works.

The Secretary of State¹ may acquire by agreement, or may by order² provide³ that the provisions of the Land Powers (Defence) Act 1958 relating to the acquisition of land⁴ are to have effect for the purpose of the acquisition by him of: (1) any land required for the construction of oil installations⁵ which in his opinion are essential for the defence of the realm⁶; (2) any land on or under which there are oil installations which were government war works⁷ immediately before 7 July 1958⁸; (3) any easement over or right restrictive of the user of any other land, being an easement or right which in his opinion is essential to the full enjoyment of

any land on or under which an oil installation falling within head (1) or head (2) is to be or has been constructed⁹.

A minister¹⁰ may for any specified purpose¹¹ by order (a 'wayleave order'¹²), and without further assurance, vest in himself with respect to any land specified in the order the right: (a) to carry out: (i) the laying of an oil pipeline; and (ii) the installation or construction of such minor works accessory to an oil pipeline¹³, whether laid under that wayleave order or otherwise, as may be specified in the order, and from time to time maintain or remove any pipelines or works so laid, installed or constructed¹⁴; (b) to use any such pipeline or works for any purpose appearing to that minister to be expedient and not to be inconsistent with the purposes for which the order was made¹⁵.

For the purpose of exercising any rights under a wayleave order, or restoring land where a pipeline or works laid, installed or constructed under an order is or are removed or abandoned, or inspecting any land, pipeline or works to which the order relates, any person authorised by the minister by whom the order was made may enter on any land not in the possession of that minister¹⁶; provided that notice of the entry must generally be given to the occupier of the land¹⁷.

The Treasury may make regulations¹⁸ for requiring notice to be given where a pipeline or works laid, installed or constructed under a wayleave order is or are removed or abandoned¹⁹; and generally for the protection of persons affected by the laying, installation, construction, maintenance or use under a wayleave order of pipelines or accessory works²⁰.

Where rights are for the time being exercisable by a minister with respect to any oil pipeline or accessory works²¹, there are restrictions on the activities that may be carried out in the vicinity of the pipeline or works without the consent of that minister²². A wayleave order is a local land charge²³.

If, by virtue of a wayleave order, the value of any subsisting interest in land is depreciated, then compensation equal to the amount of the depreciation is payable by the minister concerned²⁴. Any person who, in consequence of the exercise of the rights conferred by a wayleave order, suffers loss by reason of damage to any land or chattels, or is disturbed in the enjoyment of them, is entitled to compensation in respect of that damage or disturbance from the minister by whom the order was made²⁵.

1 The functions of the Minister of Power were transferred to the Minister of Technology under the Minister of Technology Order 1969, SI 1969/1498, and then to the Secretary of State under the Secretary of State for Trade and Industry Order 1970, SI 1970/1537. As to the Secretary of State see PARA 413 note 14 ante. These functions are now exercised by the Secretary of State for Trade and Industry: see the Transfer of Functions (Energy) Order 1992, SI 1992/1314. As to the Secretary of State for Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505 et seq; TRADE AND INDUSTRY vol 97 (2010) PARA 802.

As to the acquisition of land and compensation see also ARMED FORCES vol 2(2) (Reissue) PARA 125.

2 Any power under any provision of the Land Powers (Defence) Act 1958 to make orders includes power to vary or revoke any previous order made under that provision: s 24(2).

3 Ie subject to the provisions concerning the procedure for making orders set out in ibid s 13, Sch 2 Pt I (amended by the Post Office Act 1969 s 137, Sch 8 Pt II). As from a day to be appointed, the Land Powers (Defence) Act 1958 Sch 2 Pt I (as amended) is further amended by the Constitutional Reform Act 2005 ss 15(1), 146, Sch 4 Pt 1 paras 45-48, Sch 18. At the date at which this volume states the law, no such day had been appointed.

4 Ie the Land Powers (Defence) Act 1958 Sch 2 Pt II (amended by the Post Office Act 1969 s 137, Sch 8 Pt II; and the Statute Law (Repeals) Act 1993). As to the meaning of 'land' see PARA 528 note 19 ante.

5 'Oil installations' means any works for the storage or transmission of oil (including oil pipelines and works accessory to oil pipelines) and any works for giving access to, or otherwise required in connection with, any such works: Land Powers (Defence) Act 1958 s 25(1). 'Oil pipeline' means any main or pipe for the transmission of oil, or for the transmission of water or any other substance in connection with the storage or transmission of oil, or any part of such a main or pipe: s 25(1). References to the maintenance of an oil pipeline or of accessory

works must be construed as including references to the replacing of them, and the provisions of the Land Powers (Defence) Act 1958 apply to anything laid, installed or constructed by way of replacement as they previously applied to the thing replaced: s 25(4).

6 Ibid s 13(a).

7 Ie for the purposes of the Requisitioned Land and War Works Act 1945 Pt II (ss 4-14) (repealed). As to the meaning of 'government war works' see PARA 528 note 1 ante.

8 Land Powers (Defence) Act 1958 s 13(b).

9 Ibid s 13(c).

10 Ie: (1) a Secretary of State, for defence purposes; (2) the Secretary of State (see note 1 supra), for the purpose of the provision and maintenance of facilities which in his opinion are essential for the defence of the realm; (3) any of those ministers, for the purpose of any diversion appearing to that minister to be necessary or expedient of an oil pipeline which is vested in or under the control of that minister and either is a government oil pipeline or was laid under a wayleave order made by that minister: *ibid* s 14(3) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II). For the meaning of 'minister' see PARA 528 note 15 ante. For the meaning of 'government oil pipeline' see PARA 528 note 6 ante.

'Defence purposes' includes any purpose of the naval, military or air forces of the Crown, the service of any visiting force within the meaning of the Visiting Forces Act 1952 Pt I (ss 1-12) (as amended) (see ARMED FORCES vol 2(2) (Reissue) PARA 135 et seq), and certain purposes connected with the service of any of those forces: see the Land Powers (Defence) Act 1958 s 25(1).

11 See note 10 supra.

12 'Wayleave order' means an order made under the Land Powers (Defence) Act 1958 s 14(1): see s 25(1). As to the procedure for making orders see s 14, Sch 2 Pt I (as amended: see note 3 supra). In relation to works in exercise of the powers under a wayleave order certain provisions of the New Roads and Street Works Act 1991 are modified with regard to plans and to avoid an unacceptable diversion or change of a government oil pipeline: see the Land Powers (Defence) Act 1958 s 18A (added by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt IV para 100). As to street works generally see HIGHWAYS, STREETS AND BRIDGES.

13 'Minor works accessory to an oil pipeline' includes: (1) manholes, inspection pits and similar works; (2) electrical apparatus for the operation or maintenance of an oil pipeline, and electric lines (within the meaning of the Electricity Act 1989 s 64(1): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041) provided mainly for the purpose of supplying electricity to such apparatus; (3) markers for indicating the position of an oil pipeline or of any such apparatus or electric line in so far as the pipeline, apparatus or electric line is placed below the surface of the land; (4) stiles, bridges, gates or other works for affording access to an oil pipeline: Land Powers (Defence) Act 1958 s 14(2) (amended by the Electricity Act 1989 s 112(1), Sch 16 para 9).

14 Land Powers (Defence) Act 1958 s 14(1)(a). These operations may be carried out in such positions (subject to any minor deviations found to be necessary or expedient) under or above the surface of that land, or partly under and partly above the surface of it, as may be specified in the order: s 14(1)(a).

15 Ibid s 14(1)(b). The working of minerals is restricted, subject to the payment of compensation: see s 15(2).

16 Ibid s 15(1). Any person who wilfully obstructs a person acting in the exercise of these powers is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 15(1), Sch 4 para 2 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 432 note 21 ante. Any person who in consequence of the exercise of these powers suffers loss by reason of damage to any land or chattels or is disturbed in the enjoyment of them is entitled to compensation, and any dispute as to a right of compensation or as to the amount of compensation must be determined by the Lands Tribunal: see Sch 4 para 3. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

17 See *ibid* s 15(1) proviso. As to service of the notice see s 23. As to the meaning of 'occupier' see PARA 528 note 17 ante.

18 The power to make regulations is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 24(1). As to the regulations made see the Government Oil Pipe-Lines (No 2) Regulations 1959, SI 1959/724. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

19 Land Powers (Defence) Act 1958 s 15(3)(b).

20 Ibid s 15(3)(a).

21 le under the Requisitioned Land and War Works Act 1948 s 12(1) or under a wayleave order. As to the rights under s 12 (as amended) see PARA 528 ante.

22 See the Land Powers (Defence) Act 1958 s 16(1). The minister may, if he thinks fit, direct that anything done in contravention of the restrictions is to be deemed to have been done with his consent: see s 16(4). The minister may take remedial action if the restrictions are contravened (see s 16(2), Sch 4 paras 1, 2 (Sch 4 para 2 as amended: see note 16 supra)); and any expenses so incurred are recoverable from the occupier of the land on which the contravention was committed (see s 16(3)).

23 Ibid s 17(1) (substituted by the Local Land Charges Act 1975 s 17(2), Sch 1). As to registration of wayleave orders see the Land Powers (Defence) Act 1958 s 17 (amended by the Local Land Charges Act 1975 Sch 1; the Local Land Charges Act 1975 s 19(1), Sch 2; and the Local Government Act 1972 s 272(1), Sch 30).

24 See the Land Powers (Defence) Act 1958 s 18(1). The Treasury may by regulations require, as a condition of the payment of compensation under s 18, that a claim must be made in a prescribed form and manner and within a certain period: see s 18(4). The power to make regulations is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 24(1). As to the regulations made see the Government Oil Pipe-Lines (No 2) Regulations 1959, SI 1959/724. Any dispute as to a right of compensation under the Land Powers (Defence) Act 1958 s 18, or as to the amount of compensation, must be determined by the Lands Tribunal: s 18(5).

25 Ibid s 18(3). See also note 24 supra.

UPDATE

529 Acquisition of land for oil installations; wayleave orders for oil pipelines and accessory works

NOTE 3--Day now appointed: SI 2006/1014. 1958 Act Sch 2 Pt 1 further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 5; Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519 (see ARMED FORCES vol 2(2) (Reissue) PARA 103).

NOTES 16, 24--References to the Lands Tribunal are now to the Upper Tribunal: Land Powers (Defence) Act 1958 s 18(5), Sch 4 para 3 (amended by SI 2009/1307).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(iii) The Requisitioned Land and War Works Acts 1945 and 1948/530. Acquisition or extinction of easements; acquisition of levels of land or reversionary interests.

530. Acquisition or extinction of easements; acquisition of levels of land or reversionary interests.

The power of any minister¹ to acquire land² under the Defence Acts for any purpose³ is extended⁴ so as to enable him to acquire any such easements⁵ over or rights restrictive of the user⁶ of any land as he requires for that purpose⁷. Surface land and minerals or lower strata may be acquired separately under the Defence Acts⁸; and where the minister or any person on his behalf is in possession under a lease or tenancy, any interest reversionary on it may be acquired under those Acts⁹. Compensation is payable in respect of the diminution in the value of the interest in land of any person by the acquisition of the easement or restrictive right¹⁰.

Procedure for the acquisition of an easement or restrictive right under these provisions is by notice to treat¹¹. If the minister is of the opinion that he will be unable, or unable without undue delay, to acquire such an easement or restrictive right by agreement, he may, at any time

within two months from the service of the notice to treat, execute a deed poll which is deemed¹² to be a deed of grant or covenant entered into with him by all necessary parties¹³.

An easement or restrictive right may be released by a minister, wholly or in part, and with or without consideration¹⁴, but the statutory provision for the discharge or modification of restrictive covenants¹⁵ is inapplicable¹⁶.

Where a minister having power to acquire land under the Defence Acts has so acquired or proposes to acquire any land which is subject to an easement, he may, by notice served on the persons on whom and in the manner in which under those Acts a notice to treat would be required to be served for the compulsory acquisition of the dominant tenement, extinguish the easement or modify it in such manner and to such extent as may be specified in the notice¹⁷.

1 For the meaning of 'minister' see PARA 510 note 9 ante. The power of a minister to acquire land under the Defence Acts is unaffected by the fact that his office may be temporary or that he can obtain or has obtained possession apart from those Acts: Requisitioned Land and War Works Act 1945 s 33(2). As to the Defence Acts see PARA 525 note 4 ante.

2 Where a minister has acquired or has power to acquire any land under the Defence Acts or would have power to acquire any land if he did not already own it, and that land contains part of a continuous main or pipe or the whole or part of works used in connection with it, any rights necessary for or incidental to the maintenance or use of any part of the main or pipe which is in, over or under land not owned or acquired by the minister may, subject to and in accordance with the provisions of the Requisitioned Land and War Works Act 1945 relating to the acquisition of easements, be acquired by him as easements for the benefit of such of the first-mentioned land as he owns or acquires; and, if so acquired by him, such rights are deemed for all purposes to be such easements: s 59(4). In relation to the acquisition of any such rights, references to easements which are in the opinion of the minister essential to the full enjoyment of the land must be construed as references to easements which are essential in his opinion to the full enjoyment of the main or pipe: s 59(4) proviso.

3 Powers under *ibid* Pt VII (ss 32-39) (as amended) may be exercisable for the purposes of any visiting force: see the Visiting Forces Act 1952 s 8(1); the International Headquarters and Defence Organisations Act 1964 s 1(2), Schedule para 7; and ARMED FORCES vol 2(2) (Reissue) PARA 142.

4 This extension, which as originally enacted was temporary, has been made permanent: see PARA 525 ante.

5 'Easement' includes a right to support for any land or for any buildings or works, and a right to withdraw that support; and any such right obtained under the Defence Acts is deemed an easement: Requisitioned Land and War Works Act 1945 s 59(3). The power conferred to acquire easements includes power in the like manner and subject to the like provisions to acquire rights, as against all persons affected or to be affected, to take water from a watercourse for the benefit of any land, whether contiguous or not, for the like purposes and to the like extent as water could be taken by virtue of ownership of land contiguous to the watercourse at the place where it is proposed to take the water: Requisitioned Land and War Works Act 1948 s 6, Schedule para 9.

6 A covenant to limit the growth of trees or other vegetation on any land is deemed to confer a right restrictive of the user of that land; and references to rights restrictive of the user of land are to be construed accordingly: Requisitioned Land and War Works Act 1945 s 59(5).

Where: (1) a right restrictive of the user of any land has been acquired by a minister under the Defence Acts, whether by the execution of a deed poll or otherwise; and (2) between the date of the notice to treat and the acquisition of that right, any works have been constructed on, over or below the surface of the land adversely affected by the right; and (3) the construction of the works would have been an infringement of the right if it had taken place after the acquisition, the minister is entitled to remove the works and to recover the costs reasonably incurred in doing so from the person by whom the works were constructed: Requisitioned Land and War Works Act 1945 s 38(1).

7 *Ibid* s 33(1) (amended by the Statute Law (Repeals) Act 1973). Any power of any persons under the Defence Acts to sell or convey land is deemed to include power to create by grant to, or covenant with, a minister any easement or right which that minister has power to acquire under those Acts: Requisitioned Land and War Works Act 1945 s 36(2).

8 See *ibid* s 34(1) (amended by the Statute Law Repeals Act 1973; and the Coal Industry Act 1994 s 67(1), Sch 9 para 2). As to the making permanent of the Requisitioned Land and War Works Act 1945 s 34 (as amended) see PARA 617 ante. The acquisition of the minerals or lower strata without the surface is subject to the Coal Industry Act 1994 s 10(3) (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 71): Requisitioned Land and War Works Act 1945 s 34(1) (as so amended).

9 See *ibid* s 34(2) (amended by the Statute Law (Repeals) Act 1973).

10 See the Requisitioned Land and War Works Act 1945 s 39. Questions of disputed compensation are referable to the Lands Tribunal: see the Land Compensation Act 1961 s 1. As to compensation generally and the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 715 et seq.

11 Where, under the Defence Acts, a minister has power to acquire an easement over or right restrictive of the user of any land, he may, with a view to the creation by grant to him, or covenant with him, of the easement or right, serve a notice to treat for the acquisition of the easement or right on the persons who would, under those Acts or otherwise, be entitled to sell the land to be adversely affected by the easement or right, or otherwise have any interest in the land: Requisitioned Land and War Works Act 1945 s 36(1). Constructive service of a notice to treat is deemed service: s 59(7). A notice to treat for the acquisition of an easement relating to water may be addressed generally to all persons interested in any land which will be adversely affected, and, if so addressed, is deemed to be duly served by publication in the London Gazette and in such other manner as is best adapted, in the minister's opinion, for informing persons affected: s 36(3). See also note 13 *infra*.

12 *Ie* for the purposes of the Land Registration Act 2002 and the Land Charges Act 1972: see LAND CHARGES; LAND REGISTRATION.

13 See the Requisitioned Land and War Works Act 1945 s 37(1), (2) (amended by the Land Registration Act 2002 s 133, Sch 11 para 4(1), (2)). Where the minister executes a deed poll under the Requisitioned Land and War Works Act 1945 s 37 (as amended), he must give notice of its effect in such manner as is in his opinion best adapted for informing persons affected: s 37(5). A statement in the deed poll that the requirements of s 36(3) (see note 11 *supra*) have been complied with is conclusive except for the purposes of proceedings begun within two years after the execution of the deed: s 37(4).

14 *Ibid* s 38(2).

15 *Ie* the Law of Property Act 1925 s 84 (as amended): see EQUITY vol 16(2) (Reissue) PARA 630.

16 Requisitioned Land and War Works Act 1945 s 38(3) (amended by the Law of Property Act 1969 s 28(10)).

17 Requisitioned Land and War Works Act 1948 s 4(2) (amended by the Statute Law (Repeals) Act 1973). Where an interest in a dominant tenement is vested in a person carrying on a statutory undertaking, the provisions of the Town and Country Planning Act 1990 ss 271-282 (as amended) (and see also the New Towns Act 1981 ss 26-30 (s 26 as amended), Sch 4 (as amended), Schs 7, 8) apply with adaptations as respects the interest of the person carrying on the statutory undertaking in lieu of any corresponding provisions of the Requisitioned Land and War Works Act 1948 s 4(2) (as amended): see s 4(3); and the Extinguishment or Modification of Easements Regulations 1948, SI 1948/1582, reg 4. See further TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1019-1030. If there is a public inquiry into compensation, the minister must give reasons for his decision if requested: see the Tribunals and Inquiries Act 1992 s 10 (amended by the Pensions Act 1995 ss 122, 151, 177, Sch 3 para 21(b), Sch 5 para 16(3), Sch 7 Pt III; the Pensions Act 2004 s 320, Sch 13, Pt I; and the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, arts 1, 2, Sch); and the Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, arts 3, 4, Schedule Pt I para 53.

UPDATE

530 Acquisition or extinction of easements; acquisition of levels of land or reversionary interests

NOTE 10--Reference to the Lands Tribunal is now to the Upper Tribunal: Land Compensation Act 1961 s 1 (amended by SI 2009/1307).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(iii) The Requisitioned Land and War Works Acts 1945 and 1948/531. Minister's certificate.

531. Minister's certificate.

A certificate by any minister¹ as to: (1) what government war work² has been done on any land³; (2) what government war use⁴ had been made of any land; (3) what damage has occurred on any land owing to government war use of it; (4) the periods for which any land was in his possession or in that of any other minister or in the possession of any person occupying or using it under his authority or that of any other minister; and (5) whether any specified works were constructed on, over or below the surface of any land wholly or partly at the expense of the Crown or by arrangement with any minister, is evidence of the facts stated⁵.

Every document purporting to be such a certificate and to be signed by or on behalf of a minister or other person must be received in evidence and must, until the contrary is proved, be deemed to be such a certificate of that minister or person, and in any legal proceedings, including arbitrations, the production of a document purporting to be certified by or on behalf of the minister or person having power to give any such certificate to be a true copy of such a certificate is, unless the contrary is proved, sufficient evidence of the certificate⁶.

1 For the meaning of 'minister' see PARA 510 note 9 ante.

2 For the meaning of 'government war work' see PARA 528 note 1 ante.

3 The 'doing of work on land' means the doing of any work on, over or below the surface of the land, and, in particular, includes the making of any erection or excavation, the placing of any thing, and the maintenance, removal, demolition, pulling down, destruction or rendering useless of any thing, on, over or below that surface: Requisitioned Land and War Works Act 1945 s 59(2). See also PARA 510 note 2 ante.

4 'Government war use' means, in relation to land, any use to which that land is put during the war period by or by arrangement with a minister, or under emergency powers: *ibid* s 59(1). For the meanings of 'war period' and 'emergency powers' see PARA 509 note 10 ante.

5 *Ibid* s 58(1).

6 *Ibid* s 58(2).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(2) COMPENSATION FOR REQUISITION ETC/(iii) The Requisitioned Land and War Works Acts 1945 and 1948/532. Expenses.

532. Expenses.

Any expenses incurred or compensation payable under or by virtue of the Requisitioned Land and War Works Act 1945 by any minister¹, and any increase attributable to that Act in any compensation payable by the Crown under any other Act, are defrayed out of moneys provided by Parliament².

Any increase in consequence of the provisions of the Requisitioned Land and War Works Act 1948 in the sums payable³ under the Compensation (Defence) Act 1939 or the Requisitioned Land and War Works Act 1945 must be defrayed out of moneys provided by Parliament⁴. Any other expenses of a minister incurred under the provisions relating to easements over land acquired or proposed to be acquired under the Defence Acts⁵, or relating to government oil pipelines⁶, must also be defrayed out of moneys provided by Parliament⁷.

Any expenditure attributable to the provisions of the Land Powers (Defence) Act 1958 incurred by any Minister of the Crown in the United Kingdom is to be defrayed out of moneys provided by Parliament⁸.

Any sum paid⁹ to any minister is to be paid into the Exchequer of the United Kingdom¹⁰.

- 1 For the meaning of 'minister' see PARA 510 note 9 ante.
- 2 Requisitioned Land and War Works Act 1945 s 57(1) (amended by the Miscellaneous Financial Provisions Act 1955 s 4(4), Sch 2 Pt II).
- 3 le out of moneys provided by Parliament.
- 4 Requisitioned Land and War Works Act 1948 s 16(a).
- 5 See PARA 530 ante. As to the Defence Acts see PARA 525 note 4 ante.
- 6 See PARA 528 ante. For the meaning of 'government oil pipelines' see PARA 528 note 6 ante.
- 7 Requisitioned Land and War Works Act 1948 s 16(b).
- 8 Land Powers (Defence) Act 1958 s 26(1)(a) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.
- 9 le under the Requisitioned Land and War Works Act 1945 or the Land Powers (Defence) Act 1958.
- 10 Requisitioned Land and War Works Act 1945 s 57(2); Land Powers (Defence) Act 1958 s 26(2).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(3) WAR DAMAGE/533. War damage legislation.

(3) WAR DAMAGE

533. War damage legislation.

Legislation which was chiefly contained in the War Damage Act 1943¹ formerly existed by which payments were made in respect of war damage² to land occurring during the period from 3 September 1939 to 1 October 1964³. Such payments were initially made by the War Damage Commission⁴ and later by the Commissioners of Inland Revenue. The legislation also required persons interested in the land to make contributions towards the expense of making such payments⁵. Claims for payments under the War Damage Act 1943 had to be made by 30 September 1968, and the right to receive such payments finally terminated on 30 September 1974⁶. The War Damage Acts 1943 to 1964 are now wholly repealed⁷ together with various other enactments⁸ relating to war damage and to war risks insurance. Legislation enabling local authorities to take possession of, or do work on, war damaged sites has now been repealed⁹.

The right of a person at common law to obtain compensation from the Crown in respect of war damage has been abolished¹⁰.

- 1 The War Damage Act 1943 was wholly repealed by the Statute Law (Repeals) Act 1981.
- 2 For the meaning of 'war damage' see PARA 534 post.
- 3 As to this period, referred to as 'the risk period', see the War Damage Act 1943 s 1(1)(a) (repealed).
- 4 The War Damage Commission was constituted under the War Damage Act 1943 s 3 (repealed). By the War Damage Act 1964 s 2 (repealed), the commission was dissolved and its functions were, with certain exceptions, transferred to the Commissioners of Inland Revenue (now the Commissioners for Her Majesty's Revenue and Customs: see PARA 415 note 6 ante).
- 5 See the War Damage Act 1943 s 1(1)(b) (repealed).
- 6 See the War Damage Act 1964 ss 1(1), (5), 7 (repealed).

7 The following Acts could be cited by the collective title of the War Damage Acts 1943 to 1964: the War Damage Act 1943, the War Damage (Public Utility Undertakings, etc) Act 1949, the War Damage (Clearance Payments) Act 1960 and the War Damage Act 1964: see s 14(2) (repealed). All these Acts were repealed by the Statute Law (Repeals) Act 1981 Sch 1 Pt XI.

8 The following enactments relating to war damage were repealed by the Statute Law (Repeals) Act 1981 Sch 1 Pt XI: the Trustee (War Damage Insurance) Act 1941, and the Licensing Act 1964 s 118(3). The following enactments relating to war risks insurance were also repealed by the Statute Law (Repeals) Act 1981: the War Risks Insurance Act 1939, the Restriction of Advertisement (War Risks Insurance) Act 1939 s 1(2)(a), the War Damage Act 1941, the War Damage (Amendment) Act 1942, the Insurance Contracts (War Settlement) Act 1952 and the Marine and Aviation Insurance (War Risks) Act 1952 ss 5(1)(a)(ii), (iii), (b)(ii), 10(4).

9 The War Damaged Sites Act 1949 was repealed by the Statute Law (Repeals) Act 1986 s 1, Sch 1 Pt VII.

10 War Damage Act 1965 s 1(1).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(3) WAR DAMAGE/534. Meaning of 'war damage'.

534. Meaning of 'war damage'.

For the purposes of the War Damage Act 1943¹, 'war damage' meant: (1) damage occurring, whether accidentally or not, as the direct result of action taken by the enemy², or action taken in combating the enemy or in repelling an imagined attack by the enemy³; (2) damage occurring, whether accidentally or not, as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of that damage⁴; and (3) accidental damage occurring as the direct result: (a) of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by the enemy⁵; or (b) of precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action⁶, being in either case measures involving a substantial degree of risk to property⁷. With Treasury consent⁸, the War Damage Commission⁹ might treat as damage of the kind mentioned in head (2) above any physical change in land (whether or not it caused depreciation in the value of the land) which was the direct result of measures taken under proper authority to meet the circumstances created by damage occurring as mentioned in head (1) above¹⁰.

1 As to the repeal of the War Damage Act 1943 see PARA 533 note 1 ante.

2 As to damage resulting from direct action by the enemy see *Re 36, 38, 40 and 42 Jamaica Street, Stepney* [1947] Ch 409, [1947] 1 All ER 754, CA; *Re 34, Bruton Street, Westminster* [1957] Ch 543, [1957] 2 All ER 539, CA.

3 War Damage Act 1943 s 2(1)(a) (repealed). In this context, action against the enemy in relation to any ship or aircraft so engaged was deemed to continue until the ship or aircraft returned to its base, and the expression included naval, military or air reconnaissances and patrols: s 2(3) (repealed).

4 *Ibid* s 2(1)(b) (repealed).

5 *Ibid* s 2(1)(c)(i) (repealed).

6 *Ibid* s 2(1)(c)(ii) (repealed).

7 *Ibid* s 2(1) (repealed). The measures taken in head (3) in the text did not include the imposing of restrictions on the display of lights or measures taken for training purposes: s 2(1) proviso (repealed). References in the War Damage Act 1943 to the occurrence of war damage were to be construed as references to the taking of the action or measures specified in s 2 (repealed) from which that damage resulted: s 2(4) (repealed).

8 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

9 As to the War Damage Commission see PARA 533 note 4 ante.

10 War Damage Act 1943 s 2(2) (repealed). No compensation was thus payable for depreciation so treated by the War Damage Commission or later by the Commissioners of Inland Revenue: s 109(2) (repealed).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(4) OTHER EMERGENCY CONTROL OF TRANSPORT AND ENERGY/535. Control of railways in time of hostilities, severe international tension or great national emergency.

(4) OTHER EMERGENCY CONTROL OF TRANSPORT AND ENERGY

535. Control of railways in time of hostilities, severe international tension or great national emergency.

In time of hostilities, whether actual or imminent, severe international tension or great national emergency¹, the Secretary of State² may give directions³ to such of the following persons as he may consider appropriate:

- 151 (1) the Office of Rail Regulation⁴;
- 152 (2) the Strategic Rail Authority⁵;
- 153 (3) any person who is the owner⁶ or operator⁷ of a relevant asset⁸;
- 154 (4) any person who provides railway services⁹.

The power to give such directions to a person who is the owner or operator of a relevant asset or who provides railway services includes power:

- 155 (a) in the case of a person who is the owner of a relevant asset, to direct that person to permit the use of, or to exercise his rights over, the relevant asset in such manner or for such purposes as may be specified in the direction;
- 156 (b) in the case of a person who is the operator of a relevant asset, to direct that person to exercise his powers of management over the relevant asset in such manner or for such purposes as may be so specified; and
- 157 (c) in the case of a person who provides railway services, to direct that person to do so in such manner or for such purposes as may be so specified¹⁰.

The Secretary of State may also give directions at any time to any of those persons whom he may consider appropriate, requiring that person to participate in the planning of steps that might be taken in time of actual or imminent hostilities, severe international tension or great national emergency¹¹.

The Office of Rail Regulation and the Strategic Rail Authority are each under a duty to comply with a direction so given, notwithstanding the requirements of any other enactment or instrument¹²; and a person who is the owner or operator of a relevant asset or who provides railway services is under a duty to comply with a direction so given to him, notwithstanding the requirements of any other enactment or instrument relating to him or to the use of, or the exercise of rights over, the relevant asset, the management of the relevant asset or the railway services, and notwithstanding any other duty or obligation to which he may be subject¹³.

Any person who, without reasonable excuse, contravenes or fails to comply with a direction so given to him is guilty of an offence and liable to a penalty¹⁴. No proceedings may be instituted

in England and Wales in respect of such an offence except by or with the consent of the Secretary of State or the Director of Public Prosecutions¹⁵.

Any person (other than the Office of Rail Regulation and the Strategic Rail Authority) who suffers direct injury or loss arising from compliance with a such direction given in time of actual or imminent hostilities, severe international tension or great national emergency is entitled to receive compensation from the Secretary of State of such amount as may be agreed by that person and the Secretary of State or, in default of agreement, of such amount as may be determined by an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors¹⁶. Any sums required by the Secretary of State for paying such compensation must be paid out of money provided by Parliament¹⁷.

1 'Great national emergency' means any natural disaster or other emergency which, in the opinion of the Secretary of State (see note 2 *infra*), is or may be likely to give rise to such disruption of the means of transport that the population, or a substantial part of the population, of Great Britain is or may be likely to be deprived of essential goods or services: Railways Act 1993 s 118(11) (amended by Transport Act 2000 Sch 16 para 49, Sch 31 Pt IV). For the meaning of 'Great Britain' see PARA 402 note 4 *ante*.

2 As to the Secretary of State see PARA 413 note 14 *ante*. These functions are generally exercised by the Secretary of State for Transport.

3 The power to give such directions to the Office of Rail Regulation or the Strategic Rail Authority (see the text and notes 4-5 *infra*) includes power to direct the carrying out of functions in such manner or for such purposes as may be specified in the direction: Railways Act 1993 s 118(3) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 49; and the Railways and Transport Act 2003 s 16(5), Sch 2 Pt I paras 1, 3). As from a day to be appointed, the Railways Act 1993 s 118(3) (as amended) is further amended so as to omit reference to the Strategic Rail Authority: see s 118(3) (as so amended; and prospectively amended by the Railways Act 2005 s 59(6), Sch 13 Pt I). At the date at which this volume states the law, no such day had been appointed. See also note 5 *infra*. As to the Office of Rail Regulation and the Strategic Rail Authority see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 5, 46 *et seq*.

4 Railways Act 1993 s 118(1)(a) (amended by the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3).

5 Railways Act 1993 s 118(1)(b) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 49); Railways Act 1993 s 151(1) (definition added by the Transport Act 2000 s 252, Sch 27 paras 17, 43). As from a day to be appointed, the Railways Act 1993 s 118(1)(b) (as amended) is repealed by the Railways Act 2005 Sch 13 Pt I. At the date at which this volume states the law, no such day had been appointed.

6 'Owner', in relation to a relevant asset, means any person who is the owner of, or who has any right over or interest in, the relevant asset and whose consent is needed to the use of the relevant asset by any other person; and 'relevant asset' means a network, a station, a light maintenance depot or any track or rolling stock within the meaning of the Railways Act 1993 Pts I, II (ss 1-116) (as amended) (see s 83(1); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 285); s 118(11).

7 'Operator', in relation to a relevant asset, means the person having the management of the relevant asset for the time being: *ibid* s 118(11).

8 *Ibid* s 118(1)(c).

9 *Ibid* s 118(1)(d). For the meaning of 'railways services' see s 82(1); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 82.

10 *Ibid* s 118(4).

11 *Ibid* s 118(2).

12 *Ibid* s 118(5) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 49; and the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3). As from a day to be appointed, the Railways Act 1993 s 118(5) (as amended) is further amended so as to omit reference to the Strategic Rail Authority: see s 118(5) (as so amended; and prospectively amended by the Railways Act 2005 Sch 13 Pt I). At the date at which this volume states the law, no such day had been appointed.

13 Railways Act 1993 s 118(6).

14 Ibid s 118(7). The penalty on summary conviction is a fine not exceeding the statutory maximum, and on conviction on indictment is a fine or imprisonment for a term not exceeding two years or both: see s 118(7). As to the statutory maximum see PARA 475 note 9 ante.

15 Ibid s 118(8). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

16 Ibid s 118(9) (amended by the Transport Act 2000 s 215, Sch 16 paras 8, 49; and the Railways and Transport Safety Act 2003 Sch 2 Pt I paras 1, 3). As from a day to be appointed, the Railways Act 1993 s 118(9) (as amended) is further amended so as to omit reference to the Strategic Rail Authority: see s 118(5) (as so amended; and prospectively amended by the Railways Act 2005 Sch 13 Pt I). At the date at which this volume states the law, no such day had been appointed. As to the Royal Institution of Chartered Surveyors see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 284.

17 Railways Act 1993 s 118(10).

UPDATE

535 Control of railways in time of hostilities, severe international tension or great national emergency

NOTES 3, 5, 12, 16--Day now appointed: SI 2006/2911.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(4) OTHER EMERGENCY CONTROL OF TRANSPORT AND ENERGY/536. Shipping convoys.

536. Shipping convoys.

In times of war it has been the custom for cargo vessels to sail in convoy, to lessen the effect of enemy action¹. As a result, a master of a ship may be placed under a contractual duty to sail in convoy by a term of the contract of carriage², expressed or implied, to that effect³. In time of war, ships may become subject to orders of the Defence Council, issued with legislative authority, in respect of their movements and navigation generally⁴; and these orders may enjoin obedience to routing instructions issued by the Defence Council or by a convoy commander⁵. It is the duty of the master or other person for the time being in command of any vessel comprised in a convoy under the command of an officer of Her Majesty's naval forces, or of any person duly appointed in that behalf, to obey, in all matters relating to the navigation or security of the convoy, any directions which may be given: (1) where the convoy is escorted by any of Her Majesty's ships or vessels, by the commanding officer of any such ship or vessel; (2) in any case, by the officer or other person in command of the convoy, and to take such precautions for avoiding the enemy as may be required by any such directions⁶. If any such directions are not obeyed, any such commanding officer, or the officer or other person in command of the convoy, may compel obedience by force of arms⁷. Further, if the master or other person having command of any ship in convoy with any of Her Majesty's ships of war⁸ wilfully disobeys any lawful signal, instruction or command of the convoy commander or without leave deserts the convoy, he is liable upon conviction to a penalty⁹.

During the 1939-45 war, the duty of obedience to convoy orders overrode contrary obligations under the regulations for preventing collisions at sea¹⁰, and the master of a vessel was not therefore negligent in not complying with those regulations if he was executing convoy orders¹¹. Otherwise, masters of vessels remained bound by the duty of good seamanship and, so far as the circumstances permitted, the duty to take the action prescribed by those regulations to avoid collision¹². Where the master of a vessel accepts and undertakes the duties of a convoy commander, the owners of his vessel are not liable for damage by consequent collision caused

by an act of negligence on the part of the master in the course of performing his duties as convoy commander¹³.

1 As to the meaning of 'sailing in convoy' see *Hibbert v Pigou* (1783) 3 Doug KB 224. As to the extent and condition of sailing in convoy see further *Jefferies v Legendra* (1691) Carth 216; *Lethulier's Case* (1692) 2 Salk 443; *Gordon v Morley*, *Campell v Bordieu* (1747) 2 Stra 1265; *Lilly v Ewer* (1779) 1 Doug KB 72; *Smith v Readshaw* (1781) 2 Park's Marine Insurances (8th Edn) 708; *Manning v Gist* (1782) 3 Doug KB 74; *D'Eguino v Bewicke* (1795) 2 Hy Bl 551; *De Garey v Clagget* (1795) 2 Park's Marine Insurances (8th Edn) 708; *Webb v Thomson* (1797) 1 Bos & P 5; *Audley v Duff* (1800) 2 Bos & P 111; *Anderson v Pitcher* (1800) 2 Bos & P 164. As to sailing in or without convoy in relation to marine insurance see *Harrington v Halkeld* (1778) 2 Park's Marine Insurances (8th Edn) 639; and INSURANCE vol 25 (Reissue) PARA 222.

2 As to contracts of carriage by sea see generally CARRIAGE AND CARRIERS vol 7 (2008) PARAS 98, 205 et seq.

3 See *Phillips v Baillie* (1784) 3 Doug KB 374; *Runquist v Ditchell* (1799) 3 Esp 64; *Magalhaens v Busher* (1814) 4 Camp 54.

4 During the 1939-45 war, the Admiralty had power to make navigation orders and a master of a vessel contravening or not complying with such an order was guilty of an offence: see the Defence (General) Regulations 1939, SR & O 1939/927, reg 43 (revoked).

5 For an example of such a navigation order see *The Vernon City* [1942] P 9; affd [1942] P 61, 72 Ll L Rep 223, CA.

6 Naval Discipline Act 1957 s 131(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

7 Naval Discipline Act 1957 s 131(2). Neither the person using such force nor any person acting under his orders is liable for any injury, loss of life or damage to or loss of property resulting therefrom: s 131(2).

8 'Any of Her Majesty's ships of war' includes any hired armed ship or vessel in Her Majesty's service: Naval Prize Act 1864 s 2.

9 Ibid s 46 (amended by the Courts Act 1971 s 56(4), Sch 11 Pt IV; and by virtue of the Criminal Law Act 1977 s 32(1)). The penalty is a fine at the discretion of the court or imprisonment for not more than one year: see the Naval Prize Act 1864 s 46 (as so amended).

10 As to the current regulations see SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 715-843.

11 *The Vernon City* [1942] P 9; affd [1942] P 61, 72 Ll L Rep 223, CA. See also *Larchbank (Owners) v British Petrol (Owners)*, *The Larchbank* [1943] AC 299 at 305, 74 Ll L Rep 135 at 138, HL, per Lord Wright.

12 *The Scottish Musician* [1942] P 128, 72 Ll L Rep 284; *The FJ Wolfe* [1946] P 91, [1946] 1 All ER 359, CA. See also *The Emlyn* [1918] P 67.

13 *The Glaucus and City of Florence* [1948] P 95, 81 Ll L Rep 131. As to the duty of the commander of a naval escort in respect of the navigation of a convoy and the question of his liability for negligence in carrying out that duty see *The Sobieski* [1949] P 313, [1949] 1 All ER 701, CA (where a failure to take reasonable care made the escort commander personally liable, but this was not a fault in the navigation of his vessel, hence no contribution was ordered).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(4) OTHER EMERGENCY CONTROL OF TRANSPORT AND ENERGY/537. Control of aviation.

537. Control of aviation.

In time of war, whether actual or imminent, or of great national emergency, the Secretary of State¹ has power to control aviation, British air transport and the Civil Aviation Authority². These provisions are discussed elsewhere in this work³.

1 As to the Secretary of State see PARA 413 note 14 ante. The Secretary of State here concerned is the Secretary of State for Transport.

2 See the Transport Act 2000 s 93(1)(a); and AIR LAW vol 2 (2008) PARA 44. As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.

3 See note 2 supra.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/4. WARTIME EMERGENCY LEGISLATION/(4) OTHER EMERGENCY CONTROL OF TRANSPORT AND ENERGY/538. Fuel and energy control.

538. Fuel and energy control.

General and reserve powers exist under the Energy Act 1976 to control the supply and use of fuel and energy in times of actual or threatened emergency¹. Road traffic and transport law may also be relaxed under those powers². The Secretary of State³ has additional powers to give directions for preserving the security of electricity supplies⁴. These provisions are discussed elsewhere in this work⁵.

1 See the Energy Act 1976 ss 1-4, 6, 17-20 (as amended); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 603 et seq.

2 See *ibid* s 4(2), Sch 1 (amended by the Transport Act 1980 s 43, Sch 5; the Public Passenger Vehicles Act 1981 s 88, Sch 7 para 21; the Transport Act 1985 s 1, Sch 1 para 3, Sch 8; the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 17; and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 5, Sch 4 para 3).

3 As to the Secretary of State see PARA 413 note 14 ante. The Secretary of State here concerned is the Secretary of State for Trade and Industry.

4 See the Electricity Act 1989 s 96; and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1179.

5 See notes 1-2, 4 supra.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(1) IN GENERAL/539. The legislation.

5. CIVIL PROTECTION

(1) IN GENERAL

539. The legislation.

Acts of Parliament were passed in anticipation of, and subsequent to, the 1939-45 war, for the purposes of civil defence¹ and for the maintenance of order in the event of hostile attack, making provision with regard to the protection of persons and property from injury or damage, the functioning of undertakings in the event of attack, the organisation and training of civil defence forces and services, the instruction of the public, the provision of structures and other works for civil defence purposes, and the use of civil defence resources for the purposes of averting, alleviating or eradicating the effects of an emergency or disaster². All these Acts have now been repealed³ and in their place has been established a unified system of civil defence⁴.

under which local authorities, statutory undertakers and other public bodies⁵ are required to assess the risk of and plan for emergencies⁶, to act collaboratively in so doing⁷ and, where necessary, to comply with the instructions, directions and guidance of ministers⁸. Ministers are also empowered to exercise executive powers where there is an urgent need to prevent, control or mitigate the effects of an emergency⁹ and provision which could be made under existing legislation might be insufficiently effective¹⁰.

1 For the purposes of the Civil Defence Act 1948 and the Civil Defence (Armed Forces) Act 1954, 'civil defence' included any measures not amounting to actual combat for affording defence against any form of hostile attack by a foreign power or for depriving any form of hostile attack by a foreign power of the whole or part of its effect, whether the measures were taken before, at or after the time of the attack; but in the Civil Defence Act 1948 it did not include the provision or maintenance of a shelter used or intended to be used wholly or mainly by naval, military or air forces: see the Civil Defence Act 1948 s 9(1) (repealed); and the Civil Defence (Armed Forces) Act 1954 s 3(2) (repealed).

2 See, in particular, the Air-Raid Precautions Act 1937, the Civil Defence Acts 1939 and 1948, the Civil Defence (Armed Forces) Act 1954, and the Civil Protection in Peacetime Act 1986.

3 See the Civil Contingencies Act 2004 s 32, Sch 3.

4 See *ibid* Pt 1 (ss 1-18) (as amended); and PARA 544 *et seq post*.

5 *le the 'responders'*: see PARAS 542-543 *post*.

6 See PARAS 544-549 *post*. For the meaning of 'emergency' for these purposes see PARA 540 *post*.

7 See PARAS 550-557 *post*.

8 See PARAS 564-568 *post*.

9 The definition of 'emergency' for the purposes of the making of emergency regulations broadly corresponds to that applicable to the unified system of system of civil defence established under the Civil Contingencies Act 2004 Pt 1 (see PARA 540 *post*): see s 19; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 See *ibid* Pt II (ss 19-31); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(1) IN GENERAL/540. Meaning of 'emergency'.

540. Meaning of 'emergency'.

For the purposes of the emergency planning legislation¹, an 'emergency' is:

- 158 (1) an event or situation² which threatens serious damage to human welfare³ in a place in the United Kingdom⁴;
- 159 (2) an event or situation which threatens serious damage to the environment⁵ of a place in the United Kingdom⁶; or
- 160 (3) war⁷, or terrorism⁸, which threatens serious damage to the security of the United Kingdom⁹.

A Minister of the Crown may by order provide that a specified event or situation, or class of event or situation, is to be treated as falling, or as not falling, within any of the above categories¹⁰.

A 'pan-London emergency' is an emergency which threatens serious damage to human welfare in London¹¹ or the environment of London¹².

- 1 le the Civil Contingencies Act 2004 Pt 1 (ss 1-18) (as amended) (see PARA 544 et seq post).
- 2 The event or situation mentioned in *ibid* s 1(1) (see the text and notes 3-9 *infra*) may occur or be inside or outside the United Kingdom: s 1(5).
- 3 For these purposes, an event or situation threatens damage to human welfare only if it involves, causes or may cause, either: (1) loss of human life (*ibid* s 1(2)(a)); (2) human illness or injury (s 1(2)(b)); (3) homelessness (s 1(2)(c)); (4) damage to property (s 1(2)(d)); (5) disruption of a supply of money, food, water, energy or fuel (s 1(2)(e)); (6) disruption of a system of communication (s 1(2)(f)); (7) disruption of facilities for transport (s 1(2)(g)); or (8) disruption of services relating to health (s 1(2)(h)).
A Minister of the Crown may by order amend s 1(2) so as to provide that in so far as an event or situation involves or causes disruption of a specified supply, system, facility or service, it is to be treated as threatening damage to human welfare (s 1(4)(b)(i)) or it is no longer to be treated as threatening damage to human welfare (s 1(4)(b)(ii)). At the date at which this volume states the law no such order had been made. As to the making of orders generally see PARA 571 post. A corresponding power is conferred on the Scottish Ministers: see s 1(4).
- 4 *Ibid* ss 1(1)(a); Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 3(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 2(1). For the purposes of the Civil Contingencies Act 2004 Pt 1 (as amended), a reference to the United Kingdom includes a reference to the territorial sea of the United Kingdom: s 18(2). For the meaning of 'United Kingdom' see PARA 402 note 4 ante. As to the territorial sea see WATER AND WATERWAYS vol 100 (2009) PARA 31.
- 5 For these purposes, an event or situation threatens damage to the environment only if it involves, causes or may cause either contamination of land, water or air with biological, chemical or radio-active matter (*ibid* s 1(3)(a)) or disruption or destruction of plant life or animal life (s 1(3)(b)).
- 6 *Ibid* s 1(1)(b).
- 7 For these purposes, 'war' includes armed conflict: *ibid* s 18(1).
- 8 For the meaning of 'terrorism' see the Terrorism Act 2000 s 1; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 383 (definition applied by the Civil Contingencies Act 2004 s 18(1)).
- 9 *Ibid* s 1(1)(c).
- 10 *Ibid* s 1(4)(a). At the date at which this volume states the law no such order had been made. As to Ministers of the Crown see PARA 541 post.
- 11 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 55(2)(a)(i). As to the circumstances under which an event or situation threatens damage to human welfare in London see note 3 *supra* (definition applied by reg 55(2)(b)). As to the making of regulations generally see PARA 570 post.
- 12 *Ibid* reg 55(2)(a)(ii). As to the circumstances under which an event or situation threatens damage to the environment of London see note 5 *supra* (definition applied by reg 55(2)(b)).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(1) IN GENERAL/541. Ministers of the Crown.

541. Ministers of the Crown.

Originally the central authority for air-raid precautions was the Secretary of State¹, but subsequently provision was made for the distribution of civil defence functions² by Order in Council among other ministers³. Changes in the departmental structure of the central government during and since the 1939-45 war, and the corresponding alterations in the designations and functions of ministers, had effect on the distribution of civil defence functions among them⁴. A number of orders were made designating certain ministers under the Civil Defence Act 1948⁵, but these orders, to the extent that they remained unrevoked, have now lapsed on the repeal of that Act⁶. In practice, the minister responsible for civil defence functions is now the Home Secretary⁷.

- 1 See eg the Air-Raid Precautions Act 1937 (repealed).
- 2 As to the meaning of 'civil defence' for these purposes see PARA 539 note 1 ante.
- 3 See the Civil Defence Act 1939 s 1 (repealed); and the Civil Defence Act 1948 ss 1, 9(2) (repealed).
- 4 As to the transfer of ministerial functions generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 363.
- 5 Ie under the Civil Defence Act 1948 s 9(2) (repealed).
- 6 See the Civil Contingencies Act 2004 s 32, Sch 3.
- 7 As to the Home Secretary see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 466 et seq.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(1) IN GENERAL/542. The category 1 responders.

542. The category 1 responders.

For the purposes of the emergency planning legislation¹, the general category 1 responders², whose principal roles are to assess the risk of emergencies occurring and to make, maintain and publish appropriate plans³, are:

- 161 (1) county and county borough councils⁴;
- 162 (2) district councils⁵;
- 163 (3) London borough councils⁶;
- 164 (4) the Common Council of the City of London⁷;
- 165 (5) the Council of the Isles of Scilly⁸;
- 166 (6) chief officers of police⁹;
- 167 (7) the Chief Constable of the Police Service of Northern Ireland¹⁰;
- 168 (8) the Chief Constable of the British Transport Police Force¹¹;
- 169 (9) fire and rescue authorities¹²;
- 170 (10) NHS trusts¹³;
- 171 (11) NHS foundation trusts¹⁴;
- 172 (12) primary care trusts¹⁵;
- 173 (13) local health boards¹⁶;
- 174 (14) the Health Protection Agency¹⁷;
- 175 (15) port health authorities¹⁸;
- 176 (16) the Environment Agency¹⁹; and
- 177 (17) the Secretary of State²⁰.

Additional category 1 responders may be appointed, and existing responders may be removed from the list of category 1 responders or re-designated as category 2 responders²¹, by order of a Minister of the Crown²².

1 Ie the Civil Contingencies Act 2004 Pt 1 (ss 1-18) (as amended) (see PARA 544 et seq post).

2 The category 1 responders listed in heads (1)-(17) in the text are known as 'general category 1 responders': see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 3(1). As to the making of regulations generally see PARA 570 post. Category 1 responders for Scotland are also nominated: see the Civil Contingencies Act 2004 Sch 1 Pt 2; and notes 4-20 infra. The general category 1 responders and the category 1 responders for Scotland are together referred to as 'category 1 responders': s 3(4).

3 See PARAS 544-557 post. Category 1 responders are also involved in the establishment of local resilience forums and strategic co-ordinating groups (see PARAS 558-560 post), in sharing information with other responders (see PARAS 561-563 post) and in bringing proceedings for failure to comply with the emergency planning legislation (see PARA 569 post).

4 Civil Contingencies Act 2004 Sch 1 Pt 1 paras 1(a), 2(a), (b). As to the counties in England and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq. The corresponding Scottish category 1 responders are councils constituted under the Local Government etc (Scotland) Act 1994 s 2: Civil Contingencies Act 2004 Sch 1 Pt 2 para 13.

Where an emergency or disaster involving destruction of or danger to life or property occurs or is imminent or there is reasonable ground for apprehending such an emergency or disaster, and a principal council (ie a county, county borough or district council, or a London borough council: see the Local Government Act 1972 s 270(1); and LOCAL GOVERNMENT vol 69 (2009) PARA 23) is of opinion that it is likely to affect the whole or part of its area or all or some of its inhabitants, the council may incur necessary expenditure in taking action to avert, alleviate or eradicate the effects or potential effects of the event and may make grants or loans to other persons or bodies in respect of any such action taken by those persons or bodies: see s 128 (as amended); and LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 521.

5 Civil Contingencies Act 2004 Sch 1 Pt 1 para 1(b). As to district councils in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to the corresponding Scottish category 1 responders see note 4 supra. For the powers of district councils to incur expenditure in the event of an emergency see note 4 supra.

6 Ibid Sch 1 Pt 1 para 1(c). As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. For the powers of London borough councils to incur expenditure in the event of an emergency see note 4 supra.

7 Ibid Sch 1 Pt 1 para 1(d). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

8 Ibid Sch 1 Pt 1 para 1(e). As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

9 Ibid Sch 1 Pt 1 para 3(1). As to chief officers of police see the Police Act 1996 s 101(1); and POLICE vol 36(1) (2007 Reissue) PARA 178 et seq. The corresponding Scottish category 1 responders are chief constables of police forces maintained under the Police (Scotland) Act 1967: Civil Contingencies Act 2004 Sch 1 Pt 2 para 14.

10 Ibid Sch 1 Pt 1 para 3(2).

11 Ibid Sch 1 Pt 1 para 3(3). As to the British Transport Police Force see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 281 et seq.

12 Ibid Sch 1 Pt 1 para 4. As to fire and rescue authorities see the Fire and Rescue Services Act 2004 s 1; and FIRE SERVICES vol 18(2) (Reissue) PARA 17 et seq. The corresponding Scottish category 1 responders are fire authorities (ie a council constituted under the Local Government etc (Scotland) Act 1994 s 2 or a joint board constituted under an administration scheme made by virtue of the Local Government (Scotland) Act 1973 or the Fire Services Act 1947 s 36): Civil Contingencies Act 2004 Sch 1 Pt 2 para 15.

13 Ibid Sch 1 Pt 1 para 5. As to NHS trusts (as established under the National Health Service and Community Care Act 1990 s 5 (as amended)) see HEALTH SERVICES vol 54 (2008) PARA 155 et seq. An NHS trust is a general category 1 responder only if and in so far as it has the functions of providing: (1) ambulance services; (2) hospital accommodation and services in relation to accidents and emergencies; or (3) services in relation to public health in Wales: Civil Contingencies Act 2004 Sch 1 Pt 1 para 5. In relation to the health service, the corresponding Scottish category 1 responders are the Scottish Ambulance Service Board and Health Boards constituted under the National Health Service (Scotland) Act 1978 s 2: Civil Contingencies Act 2004 Sch 1 Pt 2 paras 16, 17.

14 Ibid Sch 1 Pt 1 para 6. As to NHS foundation trusts see the Health and Social Care (Community Health and Standards) Act 2003 s 1; and HEALTH SERVICES vol 54 (2008) PARA 174 et seq. An NHS foundation trust is a general category 1 responder only if and in so far as it has the function of providing hospital accommodation and services in relation to accidents and emergencies: Civil Contingencies Act 2004 Sch 1 Pt 1 para 6. See note 13 supra.

15 Ibid Sch 1 Pt 1 para 7. As to primary care trusts (as established under the National Health Service Act 1977 s 16A (as added and amended)) see HEALTH SERVICES vol 54 (2008) PARA 111 et seq. See note 13 supra.

16 Civil Contingencies Act 2004 Sch 1 Pt 1 para 8. As to local health boards (as established under the National Health Service Act 1977 s 16BA (as added and amended)) see HEALTH SERVICES vol 54 (2008) PARA 74. See note 13 supra.

17 Civil Contingencies Act 2004 Sch 1 Pt 1 para 9(1) (substituted by the Civil Contingencies Act 2004 (Amendment of List of Responders) Order 2005, SI 2005/2043, art 2(a)). As to the Health Protection Agency (as established under the Health Protection Agency Act 2004 s 1) see HEALTH SERVICES vol 54 (2008) PARA 213 et seq. The Health Protection Agency is a general category 1 responder only in so far as its functions relate to Great Britain: Civil Contingencies Act 2004 Sch 1 Pt 1 para 9(1) (as so substituted). For the meaning of 'Great Britain' see PARA 402 note 4 ante.

18 Ibid Sch 1 Pt 1 para 10. As to port health authorities (as constituted under the Public Health (Control of Disease) Act 1984 s 2(4)) see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 102.

19 Civil Contingencies Act 2004 Sch 1 Pt 1 para 11. As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. The corresponding Scottish category 1 responder is the Scottish Environment Protection Agency: Sch 1 Pt 2 para 18.

20 Ibid Sch 1 Pt 1 para 12. The Secretary of State is a general category 1 responder only in so far as his functions include responding to maritime and coastal emergencies (excluding the investigation of accidents, as to which see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 844 et seq): Sch 1 Pt 1 para 12.

21 As to the category 2 responders see ibid Sch 1 Pt 3; and PARA 543 post.

22 See ibid s 13(1). This empowers a Minister of the Crown by order to amend Sch 1 so as to add an entry to, or remove an entry from, Sch 1 Pt 1 or Sch 1 Pt 3, or move an entry from Sch 1 Pt 1 to Sch 1 Pt 3 or vice versa; such an order may add, remove or move an entry either generally or only in relation to specified functions of a person or body (s 13(3)(a)) and may make incidental, transitional or consequential provision (which may include provision amending the Civil Contingencies Act 2004 or another enactment) (s 13(3)(b)). As to the making of orders generally see PARA 571 post. As to Ministers of the Crown see PARA 541 ante. A corresponding power is conferred on the Scottish Ministers in respect of the Scottish responders specified in Sch 1 Pts 2, 4: see s 13(2).

UPDATE

542 The category 1 responders

TEXT AND NOTES 13-16--2004 Act Sch 1 paras 5-8 amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 271(a)-(d).

NOTE 14--An NHS foundation trust is now a general category 1 responder only if and in so far as it has the function of providing (1) ambulance services; or (2) hospital accommodation and services in relation to accidents and emergencies: Civil Contingencies Act 2004 Sch 1 Pt 1 para 6 (amended by SI 2008/3012).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(1) IN GENERAL/543. The category 2 responders.

543. The category 2 responders.

For the purposes of the emergency planning legislation¹ the category 2 responders², whose role is to co-operate with category 1 responders³ in assessing the risks of and planning for emergencies⁴, are:

- 178 (1) holders of electricity transmission, distribution or interconnector licences⁵;
- 179 (2) holders of gas transporter or gas interconnector licences⁶;
- 180 (3) water and sewerage undertakers⁷;
- 181 (4) persons who provide public electronic communications networks⁸ which make telephone services⁹ available¹⁰;
- 182 (5) persons who are licensed¹¹ to operate railway assets¹²;
- 183 (6) persons providing services in connection with railways in Great Britain pursuant to European Union law¹³;

- 184 (7) Transport for London¹⁴;
- 185 (8) London Underground Limited¹⁵;
- 186 (9) airport operators in Great Britain¹⁶;
- 187 (10) harbour authorities in Great Britain¹⁷;
- 188 (11) the Secretary of State, when acting as a highway authority¹⁸;
- 189 (12) the Health and Safety Executive¹⁹; and
- 190 (13) strategic health authorities²⁰.

Additional category 2 responders may be appointed, and existing responders may be removed from the list of category 2 responders or re-designated as category 1 responders, by order of a Minister of the Crown²¹.

1 Ie the Civil Contingencies Act 2004 Pt 1 (ss 1-18) (as amended) (see PARA 544 et seq post).

2 The category 2 responders listed in heads (1)-(10), (12), (13) in the text are known as 'general category 2 responders': see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 3(1). As to the making of regulations generally see PARA 570 post. Category 2 responders for Scotland are also nominated: see the Civil Contingencies Act 2004 Sch 1 Pt 4; and notes 5-20 infra. The general category 2 responders and the category 2 responders for Scotland are together referred to as 'category 2 responders': s 3(5).

3 As to the category 1 responders see PARA 542 ante.

4 See PARA 555 post. The category 2 responders are empowered to make arrangements for warning, informing and advising the public (see PARA 548 post), to collaborate with category 1 responders in advising and assisting businesses and voluntary organisations (see PARAS 553-554 post), to collaborate with category 1 responders and with other category 2 responders in the establishment and operation of local resilience forums and strategic co-ordinating groups (see PARAS 558-560 post), to share information with other responders (see PARAS 561-563 post) and to bring proceedings in respect of failures to comply with the emergency planning legislation (see PARA 569 post). For the meaning of 'emergency' see PARA 540 ante.

5 Civil Contingencies Act 2004 Sch 1 Pt 3 para 19; Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 3(1). As to the granting of such licences see the Electricity Act 1989 s 6 (as amended); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1065 et seq. The holders of such licences are Scottish category 2 responders in so far as the activity under the licence is undertaken in Scotland: Civil Contingencies Act 2004 Sch 1 Pt 4 para 30.

6 Ibid Sch 1 Pt 3 para 20. As to such licences see the Gas Act 1986 s 7 (as substituted and amended), s 7A (as added); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805 et seq. The holders of such licences are Scottish category 2 responders in so far as the activity under the licence is undertaken in Scotland: Civil Contingencies Act 2004 Sch 1 Pt 4 para 31.

7 Ibid Sch 1 Pt 3 para 21. As to water and sewerage undertakers (as appointed under the Water Industry Act 1991 s 6) see WATER AND WATERWAYS vol 100 (2009) PARA 134 et seq. The corresponding Scottish category 2 responder is Scottish Water (as established by the Water Industry (Scotland) Act 2002 s 20, Sch 3): Civil Contingencies Act 2004 Sch 1 Pt 4 para 32.

8 For the meaning of 'public electronic communications network' see the Communications Act 2003 ss 32(1), 151(1); and TELECOMMUNICATIONS vol 97 (2010) PARAS 60, 104 (definition applied by the Civil Contingencies Act 2004 Sch 1 Pt 3 para 22(2)(b), Sch 1 Pt 4 para 33(2)(b)). References to the provision of a network are to be construed in accordance with the Communications Act 2003 s 32(4)(a), (b) (see TELECOMMUNICATIONS vol 97 (2010) PARA 60): Civil Contingencies Act 2004 Sch 1 Pt 3 para 22(2)(a), Sch 1 Pt 4 para 33(2)(a).

9 Ie whether for spoken communication or for the transmission of data: ibid Sch 1 Pt 3 para 22(1), Sch 1 Pt 4 para 33(1).

10 Ibid Sch 1 Pt 3 para 22(1). Such providers are Scottish category 2 responders in so far as the services are made available in Scotland: Sch 1 Pt 4 para 33(1).

11 Ie under the Railways Act 1993 s 8 (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 83 et seq).

12 Civil Contingencies Act 2004 Sch 1 Pt 3 para 23. A person so licensed is a general category 2 responder for these purposes only in so far as the licence relates to activity in Great Britain (Sch 1 Pt 3 para 23), and is a

general category 2 responder for the purposes of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, only in so far as the licence relates to activity in Great Britain and in so far as the licence held is a network, passenger or station licence (see the Railways Act 1993 s 83(1); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 83 et seq) or a licence authorising a person to be the operator of a train being used on a network for a purpose other than carrying passengers (where such licence is held for the purpose of operating trains for the carriage of goods by railway and connected purposes), except where such a licence is held only for the purpose of carrying out light maintenance activities: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 3(1). For the meaning of 'Great Britain' see PARA 402 note 4 ante. Persons so licensed are Scottish category 2 responders in so far as the railway operation in question takes place in Scotland: Civil Contingencies Act 2004 Sch 1 Pt 4 para 34.

13 Ibid Sch 1 Pt 3 para 24. The persons referred to in the text are persons who provide services in connection with railways in Great Britain without holding a licence under the Railways Act 1993 s 8 (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 83 et seq) but in reliance on EC Council Directive 95/18 (OJ L143, 27.6.95, p 70) on the licensing of railway undertakings: Civil Contingencies Act 2004 Sch 1 para 24. Persons so licensed are Scottish category 2 responders in so far as the railway operation in question takes place in Scotland: Sch 1 Pt 4 para 35.

14 Ibid Sch 1 Pt 3 para 25(1). As to Transport for London see the Greater London Authority Act 1999 s 154; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

15 Civil Contingencies Act 2004 Sch 1 Pt 3 para 25(2). London Underground Limited is a subsidiary of Transport for London (see note 14 supra).

16 Ibid Sch 1 Pt 3 para 26. As to airport operators see the Airports Act 1986 s 82(1); and AIR LAW vol 2 (2008) PARA 183. An airport operator is a general category 2 responder for the purposes of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, only if it is responsible for an airport through which, in the most recent year for which data is available, at least 50,000 passengers or 10,000 tonnes of freight and mail were transported: reg 3(1). An airport operator is a Scottish category 2 responder in so far as it has responsibility for the management of an airport in Scotland: Civil Contingencies Act 2004 Sch 1 Pt 4 para 36.

17 Ibid Sch 1 Pt 3 para 27. As to harbour authorities see the Aviation and Maritime Security Act 1990 s 46(1); and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 712 et seq. A harbour authority is a general category 2 responder for the purposes of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, only if it is responsible for a harbour through which the average annual maritime traffic, calculated by reference to the most recent three years for which data is available, is at least 1.5 million tonnes of cargo or 200,000 passengers: reg 3(1). A harbour authority is a Scottish category 2 responder in so far as it has functions in relation to improving, maintaining and managing a harbour in Scotland: Civil Contingencies Act 2004 Sch 1 Pt 4 para 36.

18 Ibid Sch 1 Pt 3 para 28. The reference in the text to the Secretary of State acting as a highway authority is a reference to the Secretary of State in so far as his functions relate to matters for which he is responsible by virtue of the Highways Act 1980 s 1 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 50): Civil Contingencies Act 2004 Sch 1 para 28. Note that the Secretary of State acting as a highway authority is not a general category 2 responder for the purposes of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042: reg 3(1).

19 Civil Contingencies Act 2004 Sch 1 Pt 3 para 29. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

20 Ibid Sch 1 Pt 3 para 29A (added by the Civil Contingencies Act 2004 (Amendment of List of Responders) Order 2005, SI 2005/2043, art 2(b)). As to strategic health authorities (as established under the National Health Service Act 1977 s 8 (as substituted)) see HEALTH SERVICES vol 54 (2008) PARA 94 et seq. The corresponding Scottish category 2 responder is the Common Services Agency (as established by the National Health Service (Scotland) Act 1978 s 10): Civil Contingencies Act 2004 Sch 1 Pt 4 para 38.

21 See *ibid* s 13(1); and PARA 542 text and notes 21-22 ante.

UPDATE

543 The category 2 responders

TEXT AND NOTE 13--The persons referred to in head (6) are persons who provide services in connection with railways in Great Britain and who holds a European licence granted

pursuant to a provision contained in any instrument made for the purpose of implementing EC Council Directive 1995/18, or any action taken by an EEA State (ie an member state, Norway, Iceland or Liechtenstein) for that purpose: 2004 Act Sch 1 Pt 3 para 24 (substituted by the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050). Persons so licensed are Scottish category 2 responders in so far as the railway operation in question takes place in Scotland: 2004 Act Sch 1 Pt 4 para 35 (substituted by SI 2005/3050).

TEXT AND NOTE 20--2004 Act Sch 1 para 29A amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 271(e).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(i) Role of Category 1 Responders/544. Duty to plan for emergencies.

(2) RISK ASSESSMENTS AND EMERGENCY PLANS

(i) Role of Category 1 Responders

544. Duty to plan for emergencies.

A category 1 responder¹ is required² to assess the risk of, and make and maintain appropriate plans for, any emergency³ which would be likely seriously to obstruct the responder in the performance of its functions⁴, or where it is likely that the responder would consider it necessary or desirable to take action to prevent the emergency, to reduce, control or mitigate its effects or otherwise in connection with it⁵ and would be unable to take that action without changing the deployment of resources or acquiring additional resources⁶. General category 1 responders need not, however, make or publish any assessments or plans or warn, inform or advise the public⁷ in relation to either a major accident⁸ or a radiation emergency⁹.

1 As to the category 1 responders see PARA 542 ante.

2 Ie under the Civil Contingencies Act 2004 s 2(1) (see PARA 545-548 post).

3 For the meaning of 'emergency' see PARA 540 ante.

4 Civil Contingencies Act 2004 s 2(2)(a). 'Function' means any power or duty whether conferred by virtue of an enactment or otherwise: s 18(1); Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 3(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 2(1). As to the making of regulations generally see PARA 570 post. 'Enactment' includes an Act of the Scottish Parliament, Northern Ireland legislation, and an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation (as well as an instrument made under an Act): Civil Contingencies Act 2004 s 18(1).

5 Ibid s 2(2)(b)(i).

6 Ibid s 2(2)(b)(ii).

7 Ie under ibid s 2(1)(a), (b), (e) (assessment of emergency risks: see PARA 545 post), s 2(1)(c), (d) (planning for emergencies: see PARA 546 post), s 2(1)(f) (publishing plans and assessments: see PARA 547 post) or s 2(1)(g) (warning, informing and advising the public: see PARA 548 post).

8 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 12(a)-(d). A 'major accident' for these purposes is: (1) an accident which qualifies as a major accident for the purposes of the Control of Major Accident Hazards Regulations 1999, SI 1999/743, and results from developments in the course of the operation of an establishment to which Pt 2 (regs 4-6) (general duties of operator) applies (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 662-667) (Civil Contingencies Act 2004 (Contingency Planning)

Regulations 2005, SI 2005/2042, reg 12(a)); (2) an accident which qualifies as a major accident for the purposes of the Pipelines Safety Regulations 1996, SI 1996/825, involving a dangerous fluid (within the meaning of those regulations) which is in, or has been conveyed in, a pipeline to which those regulations apply (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 610 et seq) (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 12(c)); or (3) an accident which qualifies as a major accident for the purposes of corresponding Northern Ireland legislation (reg 12(b), (d)).

9 Ibid reg 12(e), (f). A 'radiation emergency' for these purposes is a radiation emergency within the meaning of the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 2, which results from work with ionising radiation (within the meaning of those regulations) to which those regulations apply (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 668-673) (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 12(e)), or such an emergency under corresponding Northern Ireland legislation (reg 12(f)).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(i) Role of Category 1 Responders/545. Assessing the risk of an emergency.

545. Assessing the risk of an emergency.

A category 1 responder¹ is required from time to time to assess the risk of an emergency² which affects or may affect the area in which its functions³ are exercisable⁴ either occurring⁵ or making it necessary or expedient for the responder to perform any of its functions⁶. In performing its duty to assess the risk of an emergency occurring⁷, a responder must take into account any guidance issued to it as to the likelihood of a particular emergency or an emergency of a particular kind occurring⁸ or as to the extent to which a particular emergency or an emergency of a particular kind would or might (if it occurred) cause damage to human welfare, the environment or the security of the United Kingdom⁹; must adopt any assessment of any matter so specified¹⁰; and must have regard to any relevant community risk register¹¹. A general category 1 responder having functions which are exercisable in Northern Ireland must also have regard to any assessment of the risk of an emergency occurring which has been carried out by a specified Northern Ireland body¹² and of which it is aware¹³, and may adopt or have regard to that assessment¹⁴. Responders are also required to consider whether an assessment carried out under these provisions makes it necessary or expedient to add to or modify their emergency plans¹⁵.

Ministers of the Crown and general category 1 and category 2 responders¹⁶ may bring proceedings in the High Court in respect of any failure by a person or body to comply with these requirements¹⁷.

Provision is made for the publication of assessments made under these provisions¹⁸ and for collaboration between responders in making risk assessments¹⁹.

1 As to the category 1 responders see PARA 542 ante. As to the circumstances in which category 1 responders are required to assess the risks of an emergency see PARA 544 ante. A general category 1 responder may perform the duties described in the text and notes 2-15 infra jointly with another responder (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 8(a)) and may make arrangements with another responder for that responder to perform such a duty on behalf of the general category 1 responder (reg 8(b)). As to the making of regulations generally see PARA 570 post.

2 For the meaning of 'emergency' see PARA 540 ante.

3 For the meaning of 'function' see PARA 544 note 4 ante.

4 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 13.

5 Civil Contingencies Act 2004 s 2(1)(a).

6 Ibid s 2(1)(b).

7 le under ibid s 2(1)(a). No corresponding duty exists with regard to the duty under s 2(1)(b).

8 Ibid s 3(3)(b); Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 14(10)(a). The guidance referred to in the text is guidance issued by Ministers of the Crown, the National Assembly for Wales, the Office of the First Minister and Deputy First Minister in Northern Ireland, and the Scottish Ministers, under reg 14(1)(a), (4)(a), (6)(a), (8)(a): see PARA 568 post. As to Ministers of the Crown see PARA 541 ante. As to the National Assembly for Wales, the Scottish Ministers and Ministers in Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 Ibid reg 14(10)(a). The guidance referred to in the text is guidance issued under reg 14(1)(b), (4)(b), (6)(b), (8)(b): see PARA 568 post. For the meaning of 'United Kingdom' see PARAS 402 note 4, 540 note 4 ante.

10 Ibid reg 14(10)(b). The assessments referred to in the text are those made by Ministers of the Crown, the National Assembly for Wales, the Office of the First Minister and Deputy First Minister in Northern Ireland, and the Scottish Ministers under reg 14(2), (5), (7), (9): see PARA 568 post.

11 Ibid regs 15(4), 17(4). As to the community risk register see PARA 560 post.

12 As to the specified Northern Ireland bodies see ibid reg 57(4); and PARA 557 note 3 post.

13 Ibid reg 57(1)(a).

14 Ibid reg 57(1)(b).

15 Civil Contingencies Act 2004 s 2(1)(e). The emergency plans referred to in the text are those maintained under s 2(1)(c) or (d) (see PARA 546 post).

16 As to the category 2 responders see PARA 543 ante.

17 See the Civil Contingencies Act 2004 s 10(1); and PARA 569 post.

18 See ibid s 2(1)(f); and PARA 547 post.

19 See PARAS 551, 555-560 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(i) Role of Category 1 Responders/546. Planning for an emergency.

546. Planning for an emergency.

A category 1 responder¹ is required to maintain plans for the purpose of ensuring, so far as is reasonably practicable, that if an emergency occurs the responder is able to continue to perform its functions², and for the purpose of ensuring that if an emergency occurs or is likely to occur the responder is able to perform its functions so far as necessary or desirable for the purpose of preventing the emergency³, reducing, controlling or mitigating its effects⁴, or taking other action in connection with it⁵. In performing this duty the responder must have regard to any relevant risk assessment which it has carried out⁶, to the activities of voluntary organisations⁷ which carry on activities in the area in which the functions of that responder are exercisable⁸ and which are relevant in an emergency⁹, and, in connection with its duty to maintain plans for the purpose of enabling it to deal with an emergency¹⁰, to any relevant arrangements which it maintains for the purposes of warning, informing or advising the public¹¹.

Plans maintained under these provisions may relate to a particular emergency, an emergency of a particular kind, more than one emergency or more than one kind of emergency¹², and must include provision for the carrying out of exercises¹³ and the provision of training¹⁴ for the purpose of ensuring that the plan is effective¹⁵. Every plan maintained for the purpose of enabling the responder to continue to perform its functions in an emergency¹⁶ must include a

procedure¹⁷ for determining whether an emergency which is likely seriously to obstruct the responder in the performance of its functions has occurred¹⁸, and any plan maintained for the purpose of enabling a responder to deal with an emergency¹⁹ must include a procedure for determining whether an emergency which makes it necessary or desirable for it to take action to prevent the emergency, to reduce, control or mitigate its effects or otherwise in connection with it has occurred²⁰, and whether the responder would be able to take that action without changing the deployment of resources or acquiring additional resources²¹.

Ministers of the Crown and general category 1 and category 2 responders²² may bring proceedings in the High Court in respect of any failure to comply with these requirements²³.

Provision is also made for the publication²⁴, modification or revision of plans²⁵, for collaboration between responders in making emergency plans²⁶, and for the making of multi-agency plans²⁷.

1 As to the category 1 responders see PARA 542 ante. As to the circumstances in which category 1 responders are required to assess the risks of an emergency see PARA 544 ante. A general category 1 responder may perform the duties described in the text and notes 2-21 infra jointly with another responder (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 8(a)) and may make arrangements with another responder for that responder to perform such a duty on behalf of the general category 1 responder (reg 8(b)). Provision is also made for collaboration with the London Fire and Emergency Planning Authority in discharging functions regarding pan-London emergencies: see PARA 556 post. As to the London Fire and Emergency Planning Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 217. For the meanings of 'emergency' and 'pan-London emergency' see PARA 540 ante.

2 Civil Contingencies Act 2004 s 2(1)(c). For the meaning of 'function' see PARA 544 note 4 ante.

3 Ibid s 2(1)(d)(i).

4 Ibid s 2(1)(d)(ii).

5 Ibid s 2(1)(d)(iii).

6 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 19. As to the duty to carry out risk assessments see the Civil Contingencies Act 2004 s 2(1)(a), (b); and PARA 545 ante.

7 'Voluntary organisation' means a body (other than a public or local authority) whose activities are not carried on for profit: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 3(1).

8 Ibid reg 23(1)(a).

9 Ibid reg 23(1)(b). For these purposes, a voluntary organisation carries on activities which are relevant in an emergency if it carries on activities for the purpose of preventing an emergency (reg 23(2)(a)), reducing, controlling or mitigating the effects of an emergency (reg 23(2)(b)), or taking other action in connection with an emergency (reg 23(2)(c)); and it is immaterial if the voluntary organisation also carries on activities for other purposes (reg 23(3)).

10 Ie its duties under the Civil Contingencies Act 2004 s 2(1)(d) (see the text and notes 3-5 supra).

11 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 20. As to the duty to maintain such arrangements see the Civil Contingencies Act 2004 s 2(1)(g); and PARA 548 post.

12 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 21.

13 Ibid reg 25(a).

14 Ibid reg 25(b). Provision must be included for the provision of training of an appropriate number of suitable staff of the responder (reg 25(b)(i)) and such other persons as the responder considers appropriate (reg 25(b)(ii)).

15 Ibid reg 25. As to collaboration between responders and the London Fire and Emergency Planning Authority with regard to pan-London emergencies see PARA 556 post.

16 Ie every plan maintained under the Civil Contingencies Act 2004 s 2(1)(c) (see the text and notes 1-2 supra).

17 The procedure under the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 24(1) or (2) must identify the person who should determine whether an emergency of the specified kind has occurred or enable that person to be identified (reg 24(3)(a)) and must specify the procedure which that person should adopt in taking that decision (reg 24(3)(b)), the persons who should be consulted before such a decision is taken (reg 24(3)(c)), and the persons who should be informed once such a decision is taken (reg 24(3)(d)).

18 Ibid reg 24(1). As to the procedure see note 17 supra.

19 It is maintained under the Civil Contingencies Act 2004 s 2(1)(d) (see the text and notes 3-5 supra).

20 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 24(2)(a). As to the procedure see note 17 supra.

21 Ibid reg 24(2)(b). As to the procedure see note 17 supra.

22 As to the category 2 responders see PARA 543 ante.

23 See the Civil Contingencies Act 2004 s 10(1); and PARA 569 post.

24 See ibid s 2(1)(f); and PARA 547 post.

25 If a Minister of the Crown, the National Assembly for Wales, the Office of the First Minister and Deputy First Minister in Northern Ireland or the Scottish Ministers issue guidance or an assessment to a general category 1 responder under the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 14 (see PARA 568 post), that responder must consider whether that guidance or assessment makes it necessary or expedient to add to or to modify plans maintained under these provisions: reg 26. As to Ministers of the Crown see PARA 541 ante. As to the National Assembly for Wales, the Scottish Ministers and Ministers in Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

26 See PARAS 551, 555-560 post.

27 See PARA 550 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(i) Role of Category 1 Responders/547. Publishing plans and assessments.

547. Publishing plans and assessments.

A category 1 responder¹ is required to arrange for the publication of all or part of assessments made² and plans maintained³ in so far as publication is necessary or desirable for the purpose of preventing an emergency⁴, reducing, controlling or mitigating the effects of an emergency⁵, or enabling other action to be taken in connection with an emergency⁶, although in performing this duty a responder must have regard to the importance of not alarming the public unnecessarily⁷.

Ministers of the Crown⁸ and general category 1 and category 2 responders⁹ may bring proceedings in the High Court in respect of any failure to comply with these requirements¹⁰.

Provision is made for collaboration between responders in publishing emergency plans and assessments¹¹.

1 As to the category 1 responders see PARA 542 ante. A general category 1 responder may perform the duties described in the text and notes 2-7 infra jointly with another responder (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 8(a)) and may make arrangements with another responder for that responder to perform such a duty on behalf of the general category 1 responder (reg 8(b)). As to the making of regulations generally see PARA 570 post.

2 le under the Civil Contingencies Act 2004 s 2(1)(a), (b) (see PARA 545 ante). As to the circumstances in which category 1 responders are required to assess the risks of an emergency see PARA 544 ante. For the meaning of 'emergency' see PARA 540 ante.

3 le under *ibid* s 2(1)(c), (d) (see PARA 546 ante).

4 *Ibid* s 2(1)(f)(i).

5 *Ibid* s 2(1)(f)(ii).

6 *Ibid* s 2(1)(f)(iii).

7 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 27.

8 As to Ministers of the Crown see PARA 541 ante.

9 As to the category 2 responders see PARA 543 ante.

10 See the Civil Contingencies Act 2004 s 10(1); and PARA 569 post.

11 See PARAS 551, 555-560 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(i) Role of Category 1 Responders/548. Warning, informing and advising the public.

548. Warning, informing and advising the public.

A category 1 responder¹ is required to maintain arrangements to warn the public, and to provide information and advice to the public, if an emergency² is likely to occur or has occurred³. In performing this duty a responder must have regard to any relevant plan which it maintains⁴, to any arrangements made by other specified public bodies⁵ for these purposes⁶, and to the importance of not alarming the public unnecessarily⁷. Subject to this, arrangements maintained under these provisions may relate to a particular emergency, an emergency of a particular kind, more than one emergency or more than one kind of emergency⁸, and must include provision for the carrying out of exercises⁹ and the provision of training¹⁰ for the purpose of ensuring that the arrangements are effective¹¹. Responders need not, however, maintain arrangements which would unnecessarily duplicate the information, warnings and advice which are likely to be provided by the other specified public bodies to whose arrangements it has had regard¹² in performing the duty under these provisions¹³.

Ministers of the Crown¹⁴ and general category 1 and category 2 responders may bring proceedings in the High Court in respect of any failure to comply with these requirements¹⁵.

Provision is also made for co-operation between responders in the performance of these duties¹⁶.

1 As to the category 1 responders see PARA 542 ante. A general category 1 responder may perform the duties described in the text and notes 2-13 *infra* jointly with another responder (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 8(a)) and may make arrangements with another responder for that responder to perform such a duty on behalf of the general category 1 responder (reg 8(b)). As to the making of regulations generally see PARA 570 post.

2 For the meaning of 'emergency' see PARA 540 ante.

3 Civil Contingencies Act 2004 s 2(1)(g).

4 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 28. The reference in the text to a plan that the responder maintains is a reference to a plan maintained under the Civil

Contingencies Act 2004 s 2(1)(d) (see PARA 546 ante): Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 28.

5 The other category 1 responders, category 2 responders, the Meteorological Office, the Secretary of State, and the Food Standards Agency: *ibid* reg 35(1)(a)(i)-(v). As to the category 2 responders see PARA 543 ante. As to the Food Standards Agency see FOOD vol 18(2) (Reissue) PARAS 225-250. Where a responder has functions which are exercisable in Northern Ireland, it is also required to have regard to the arrangements maintained in this regard by the Northern Ireland bodies specified in reg 57(4) (see PARA 557 note 3 post): reg 57(2)(a).

6 *Ibid* regs 35(1)(a), 57(2)(a). For these purposes, it is immaterial whether, by virtue of the Civil Contingencies Act 2004 2(1)(g), a duty under another enactment or otherwise, the other specified body (see the text and note 5 *supra*) maintains arrangements to warn the public, and to provide information and advice to the public, if an emergency is likely to occur or has occurred: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 35(2), 57(3). It is not necessary for a responder to duplicate any arrangements so made: see the text and notes 12-13 *infra*.

7 *Ibid* reg 30.

8 *Ibid* reg 29.

9 *Ibid* reg 31(a).

10 *Ibid* reg 31(b). Provision must be included for the provision of training of an appropriate number of suitable staff of the responder (reg 31(b)(i)) and such other persons as the responder considers appropriate (reg 31(b)(ii)).

11 *Ibid* reg 31.

12 See the text and notes 5-6 *supra*.

13 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 35(1)(b), 57(2)(b).

14 As to Ministers of the Crown see PARA 541 ante.

15 See the Civil Contingencies Act 2004 s 10(1); and PARA 569 post.

16 See PARAS 552, 555-560 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(i) Role of Category 1 Responders/549. Advising and assisting businesses and voluntary organisations.

549. Advising and assisting businesses and voluntary organisations.

County, county borough and district councils¹, London borough councils², the Common Council of the City of London³ and the Council of the Isles of Scilly⁴ ('relevant responders'⁵) must provide advice and assistance to the public in connection with the making of arrangements for the continuance of commercial activities by the public, or the continuance of the activities of bodies other than public or local authorities whose activities are not carried on for profit, in the event of an emergency⁶. For these purposes, advice and assistance need be given only to those businesses⁷ which carry on commercial activities in the area in which the functions⁸ of the relevant responder are exercisable⁹ and to such voluntary organisations¹⁰ which the relevant responder considers appropriate¹¹; the responder must provide advice and assistance to businesses at large¹² (and may so do to voluntary organisations at large¹³), may provide advice and assistance to an individual business or voluntary organisation¹⁴, and may provide advice and assistance to businesses or voluntary organisations in connection with identifying a business continuity consultant¹⁵ who provides advice and assistance to businesses or voluntary organisations in the area in which the functions of the relevant responder are exercisable¹⁶ and obtaining advice and assistance from such a business continuity consultant¹⁷.

Provision is also made for charging for the giving of advice¹⁸ and for relevant responders to perform these duties jointly with, or to delegate their performance to, other responders¹⁹ and to co-operate with other responders in the performance of these duties²⁰.

Ministers of the Crown²¹ and general category 1 and category 2 responders²² may bring proceedings in the High Court in respect of any failure to comply with these requirements²³.

1 As to the counties in England and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq. As to district councils in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq.

2 As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq.

3 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

4 As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 36(a). As to the making of regulations generally see PARA 570 post. The bodies referred to in the text and notes 1-4 supra are all general category 1 responders (see the Civil Contingencies Act 2004 Sch 1 paras 1, 2; and PARA 542 ante), but the other general category 1 responders specified in Sch 1 are not under the duty described in this paragraph (see s 4(1)).

6 Ibid s 4(1). Until 15 May 2006 the duty under the Civil Contingencies Act 2004 s 4(1) is to be a power rather than a duty: see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 37(a), (b)). For the meaning of 'emergency' see PARA 540 ante. In performing this duty, a relevant responder must take into account any relevant community risk register maintained by virtue of reg 15 (see PARA 560 post) (reg 38), must have regard to any guidance issued on the matter (ie under the Civil Contingencies Act 2004 s 4(6), (7): see PARA 568 post) (s 4(8)(b)), and to any advice and assistance to business (see note 7 infra) or advice and assistance to voluntary organisations (see note 10 infra) provided by other responders which have functions which are exercisable in the area in which the functions of the relevant responder are exercisable (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 43(1)(a)), and need not perform the duty to the extent that to do so would unnecessarily duplicate that advice and assistance (reg 43(1)(b)). For these purposes, it is immaterial whether the advice and assistance provided by another responder is provided by virtue of the Civil Contingencies Act 2004 s 4(1), a duty under another enactment, or otherwise: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 43(2). As to the meaning of 'enactment' see PARA 544 note 4 ante.

7 For these purposes, 'advice and assistance to business' means advice and assistance to the public in connection with the making of arrangements for the continuance of the commercial activities by the public in the event of an emergency; and any reference to 'a business' means a member of the public who carries on commercial activities: *ibid* reg 36(b).

8 For the meaning of 'functions' see PARA 544 note 4 ante.

9 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 39(1), (2).

10 For the meaning of 'voluntary organisation' see PARA 546 note 7 ante. For these purposes, 'advice and assistance to voluntary organisations' means advice and assistance to voluntary organisations in connection with the making of arrangements by voluntary organisations for the continuance of their activities in the event of an emergency: *ibid* reg 36(c).

11 *Ibid* reg 40(1), (2). A relevant responder may determine the manner in which advice and assistance is provided to voluntary organisations: reg 40(3). In determining whether a voluntary organisation is appropriate for these purposes, a relevant responder must consider: (1) whether the organisation carries on activities in the area in which the functions of the responder are exercisable (reg 40(5)(a)); (2) the nature and extent of activities carried on by the organisation, and in particular the extent to which the organisation carries on activities which contribute to the prevention of an emergency occurring (reg 40(5)(b)(i)), the reduction, control or mitigation of the effects of an emergency (reg 40(5)(b)(ii)), otherwise taking action in connection with an emergency (reg 40(5)(b)(iii)), or social welfare (reg 40(5)(b)(iv)); (3) the number of staff employed by the organisation (reg 40(5)(c)); (4) the turnover of the organisation (reg 40(5)(d)); and (5) the nature of the organisation, and in particular whether the nature of the organisation is such that the advice and assistance provided by the relevant responder is likely to improve the ability of the organisation to continue to carry on its activities in the event of an emergency (reg 40(5)(e)).

12 Ibid reg 39(3)(a). This is subject to the text and notes 7-9 supra (reg 39(3)(a)); until 15 May 2006 it is optional (reg 37(c)).

13 Ibid reg 40(3)(a).

14 Ibid regs 39(3)(b), 40(3)(b).

15 For these purposes, 'business continuity consultant' means a person who is competent to provide advice and assistance to businesses or voluntary organisations (ibid regs 39(4)(a), 40(4)(a)) and has experience of so doing (regs 39(4)(b), 40(4)(b)).

16 Ibid regs 39(3)(c)(i), 40(3)(c)(i).

17 Ibid regs 39(3)(c)(ii), 40(3)(c)(ii).

18 A relevant responder may make a charge for advice or assistance provided on request under these provisions (including advice and assistance which it is required to provide under ibid reg 39(3)(a) (see the text and note 12 supra)) but that charge must not exceed the aggregate of the direct costs of providing the advice or assistance (reg 44(a)) and a reasonable share of any costs indirectly related to the provision of the advice or assistance (reg 44(b)).

19 See PARA 553 post.

20 See PARAS 554-557 post.

21 As to Ministers of the Crown see PARA 541 ante.

22 As to the category 2 responders see PARA 543 ante.

23 See the Civil Contingencies Act 2004 s 10(1); and PARA 569 post.

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(ii) Collaboration between Responders

A. PLANNING, WARNING, INFORMING AND ADVISING

550. Multi-agency emergency plans.

Where a general category 1 responder¹ has a duty² to maintain plans for the purpose of enabling it to deal with an emergency³ in relation to a particular emergency or an emergency of a particular kind, and another category 1 responder with a corresponding duty in relation to that emergency or an emergency of that kind⁴ has functions⁵ which are exercisable in a local resilience area⁶ in which the responder's functions are exercisable⁷, the general category 1 responder must consider whether it would be appropriate to perform that duty in relation to that emergency or an emergency of that kind by collaborating with the other responder in maintaining a multi-agency plan⁸ (that is, a plan maintained by more than one category 1 responder acting jointly⁹).

1 As to the category 1 responders see PARA 542 ante.

2 I.e. under the Civil Contingencies Act 2004 s 2(1)(d): see PARA 546 ante.

3 For the meaning of 'emergency' see PARA 540 ante.

4 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 22(1)(a). As to the making of regulations generally see PARA 570 post.

5 For the meaning of 'functions' see PARA 544 note 4 ante.

6 'Local resilience area', in relation to each general category 1 or 2 responder, means the police area in which the responder's functions are exercisable, unless the responder is either the Common Council of the City of London or has functions which are exercisable in a London borough, in which case it is the area specified in relation to it in the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, Schedule: reg 3(1). As to the category 2 responders see PARA 543 ante. As to police areas see POLICE vol 36(1) (2007 Reissue) PARAS 136-138. As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

7 Ibid reg 22(1)(b).

8 Ibid reg 22(2).

9 Ibid reg 22(3).

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551. Allocation of lead responsibility for purposes of making assessments and plans.

If more than one general or Scottish category 1 responder¹ which has functions² which are exercisable in a particular local resilience area or police area³ is subject to the same civil protection duty⁴ in relation to an emergency or an emergency of a particular kind, a general or Scottish category 1 responder which is subject to that duty may co-operate with another category 1 responder which has functions which are exercisable in that area and is subject to that duty for the purpose of identifying which of them will be the category 1 responder with lead responsibility for performing that duty in relation to that area⁵. The category 1 responder who has been so identified⁶ must take the lead responsibility in performing that duty in that area⁷, consult in the course of performing the duty the general and Scottish category 1 responders which have functions which are exercisable in that area⁸ and are non-lead category 1 responders⁹ in relation to that duty¹⁰, ensure that those non-lead responders are kept informed of how the lead responder is performing the duty¹¹, and co-operate generally with those non-lead responders¹²; and the non-lead responders must co-operate with the lead responder in connection with the performance of the relevant duty by the lead responder¹³, provide any information¹⁴ to the lead responder which it considers will assist it in performing the duty¹⁵, and assist the lead responder with any exercises or training that it wishes to carry out in connection with the duty¹⁶.

1 As to the category 1 responders see PARA 542 ante.

2 For the meaning of 'functions' see PARA 544 note 4 ante.

3 For the meaning of 'local resilience area' see PARA 550 note 6 ante. That definition effectively states that, for all responders without functions in London, the local resilience area is the police area in which the responder's functions are exercisable; the legislation relating to Scottish responders carries no corresponding definition and simply refers to police areas: see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 6(1). As to the making of regulations generally see PARA 570 post.

4 For these purposes, a civil protection duty is a duty under the Civil Contingencies Act 2004 s 2(1)(a), (b), (e) (assessment of emergency risks: see PARA 545 ante), s 2(1)(c), (d) (planning for emergencies: see PARA 546 ante), and s 2(1)(f) (publishing plans and assessments: see PARA 547 ante), in relation to a particular emergency or an emergency of a particular kind: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 9(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 6(1). For the purposes of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 9, this is described as a 'relevant civil protection duty': see reg 9(1). For the meaning of 'emergency' see PARA 540 ante. Special provision is made in connection with the allocation of lead responsibility for the purpose of warning, informing and advising the public under the Civil Contingencies Act 2004 s 2(1)(g): see PARA 552 post.

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 9(2), (3); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 6(2).

6 In pursuance of either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 9 or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 6 (see the text and notes 1-5 supra): see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 10, 11(1); and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, regs 7, 8(1).

7 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(a). In the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, this responsibility is stated to be required to be performed in relation to the emergency or an emergency of a particular kind: reg 7(a).

8 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(b)(i); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(b)(i).

9 If pursuant to either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 9(3) or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 6(2) (see the text and notes 1-5 supra) one of the general or Scottish category 1 responders is identified as being the category 1 responder with lead responsibility for performing a relevant civil protection duty (see note 4 supra) in a particular area, the other category 1 responders in that area which are subject to that duty (in the case of Scottish responders, in relation to that emergency or an emergency of a particular kind) are referred to as 'non-lead Category 1 responders': Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 9(4); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 6(3).

10 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(b)(ii); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(b)(ii). In the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, this responsibility is stated to be required to be performed in relation to non-lead category 1 responders in relation to the duty so far as it applies to the emergency or an emergency of that particular kind: reg 7(b)(ii).

11 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(c).

12 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(d). The lead responder must in particular co-operate for the purpose of ensuring so far as is reasonably practicable that the non-lead responders approve of the way in which the lead responder is performing the duty: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(d).

13 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(a). The non-lead responders are not, however, required to perform the relevant duty to the extent that to do so would unnecessarily duplicate the performance of that duty by the lead responder: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(d).

14 In other than sensitive information: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(b). For the meaning of 'sensitive information' see PARA 562 post.

15 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(b).

16 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(c).

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552. Allocation of lead responsibility for purpose of warning, informing and advising the public.

Where more than one category 1 responder¹ has functions² which are exercisable in a particular local resilience area or police area³ and is subject to a duty⁴ to maintain arrangements to warn the public, and to provide information and advice to the public, if a particular emergency⁵ or an emergency of a particular kind is likely to occur or has occurred⁶, each such general category 1 responder having those functions and subject to that duty, and each such Scottish category 1 responder, must co-operate with each of the other category 1 responders for the purpose of identifying which of them will be the responder with lead responsibility for warning the public and for providing information and advice to the public if an emergency⁷ is likely to occur or has occurred⁸. Where the responder with lead responsibility has been identified⁹ or is likely to be identified¹⁰, it must, so far as it is reasonably practicable, ensure¹¹ that it is able to contact the other general or Scottish category 1 responders who are co-operating in accordance with these provisions¹², that it informs those responders of the actions it is taking, and action that it proposes to take, to warn, inform and advise the public¹³, and that it is able to collaborate with those responders in warning, informing and advising the public¹⁴; and the responders who are not the lead responder must ensure that the arrangements they maintain¹⁵ provide for them to consult the lead responder on a regular basis¹⁶ and to inform the lead responder of the actions they are taking and propose to take to warn, inform and advise the public¹⁷.

1 As to the category 1 responders see PARA 542 ante.

2 For the meaning of 'functions' see PARA 544 note 4 ante.

3 For the meaning of 'local resilience area' see PARA 550 note 6 ante. That definition effectively states that for all responders without functions in London, the local resilience area is the police area in which the responder's functions are exercisable; the legislation relating to Scottish responders carries no corresponding definition and simply refers to police areas: see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(1). As to the making of regulations generally see PARA 570 post.

4 Ie under the Civil Contingencies Act 2004 s 2(1)(g): see PARA 548 ante.

5 For the meaning of 'emergency' see PARA 540 ante.

6 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(1).

7 Ie, in so far as this duty is imposed on general category 1 responders, the emergency to which the duty under the Civil Contingencies Act 2004 s 2(1)(g) relates, or an emergency of the kind to which that duty relates (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32(2)) or, in so far as this duty is imposed on Scottish category 1 responders, an emergency or an emergency of a particular kind (Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(2)).

8 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32(2); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(2). In performing this duty, category 1 responders may identify a particular category 1 responder as the category 1 responder with lead responsibility for warning the public and providing information and advice to the public in

relation to an emergency or an emergency of a particular kind before that emergency or an emergency of that kind is likely to occur or has occurred (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32(3)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(3)(a)) and may adopt procedures by virtue of which: (1) the responder with such lead responsibility may be identified when a particular emergency or an emergency of a particular kind is likely to occur or has occurred (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32(3)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(3)(b)); and (2) the identity of the responder with such lead responsibility (whether identified by virtue of arrangements of the kind specified in the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32(3)(a) or (b) or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(3)(a) or (b)) may be changed when an emergency is likely to occur or has occurred (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32(3)(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(3)(c)).

9 Ie under either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32 or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 33(1)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 27(1). See the text and notes 1-8 *supra*.

10 Ie by virtue of procedures adopted pursuant to the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 32(3)(b) or (c) or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 26(2), (3)(b) or (c) (see note 8 *supra*): Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 33(1)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 27(2)). Note that the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 33(1)(b) in fact refers to reg 32(2)(b) or (c), provisions which do not exist; it is submitted that a reference to reg 32(3)(b) or (c) is intended.

11 Ie, in the case of a category 1 responder whose responsibility in this regard derives from *ibid* reg 32 (see the text and notes 1-8 *supra*), must ensure that the arrangements under the Civil Contingencies Act 2004 s 2(1)(g) in relation to which it has lead responsibility ensure that the requirements set out in the text and notes 12-14 *infra* are satisfied: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 33(2).

12 Ibid reg 33(2)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 27(1)(a).

13 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 33(2)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 27(1)(b).

14 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 33(2)(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 27(1)(c).

15 Ie under the Civil Contingencies Act 2004 s 2(1)(g): see the text and notes 1-6 *supra*; and PARA 548 *ante*.

16 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 34(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 28(a).

17 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 34(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 28(b).

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553. Joint and delegated performance of duty to advise and assist businesses and voluntary organisations.

County, county borough and district councils¹, London borough councils², the Common Council of the City of London³ and the Council of the Isles of Scilly⁴ and councils constituted under the

Local Government etc (Scotland) Act 1994 ('relevant responders'⁵) which have functions⁶ which are exercisable in a particular local resilience area or police area⁷ may perform their duty to provide advice and assistance to the public⁸ jointly with another responder⁹ and may make arrangements with another responder for that responder to perform such a duty on behalf of the relevant responder¹⁰. Provision is also made for co-operation between responders in the performance of this duty and for one responder to be identified as the lead responder for the purposes of such co-operation¹¹.

1 As to the counties in England and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq. As to district councils in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq.

2 As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq.

3 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

4 As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 36(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 30(a). The bodies referred to in the text and notes 1-5 supra are all category 1 responders (see the Civil Contingencies Act 2004 Sch 1 Pt 1 paras 1, 2, Pt 2 para 13; and PARA 542 ante), but the other category 1 responders specified in Sch 1 are not under the duty described in this paragraph (see s 4(1)). As to the making of regulations generally see PARA 570 post.

6 For the meaning of 'functions' see PARA 544 note 4 ante.

7 For the meaning of 'local resilience area' see PARA 550 note 6 ante. That definition effectively states that for all responders without functions in London, the local resilience area is the police area in which the responder's functions are exercisable; the legislation relating to Scottish responders carries no corresponding definition and simply refers to police areas: see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 35(1).

8 I.e. their duty under the Civil Contingencies Act 2004 s 4(1) to provide advice and assistance to the public in connection with the making of arrangements for the continuance of commercial activities by the public, or the continuance of the activities of bodies other than public or local authorities whose activities are not carried on for profit, in the event of an emergency (see PARA 549 ante). For the meaning of 'emergency' see PARA 540 ante. Until 15 May 2006, the duty under s 4(1) is to be a power rather than a duty: see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 37(a), (b); and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 31(a), (b).

9 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 41(3)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 35(3)(a).

10 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 41(3)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 35(3)(b).

11 See PARA 554 post.

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554. Co-operation in advising and assisting businesses and voluntary organisations.

Where county, county borough and district councils¹, London borough councils², the Common Council of the City of London³, the Council of the Isles of Scilly⁴ and councils constituted under the Local Government etc (Scotland) Act 1994 ('relevant responders'⁵) have functions⁶ which

are exercisable in a particular local resilience area or police area⁷, they must co-operate with each other in connection with the performance of their duty to provide advice and assistance to the public⁸, and any other responders⁹ which have functions which are exercisable in that area must co-operate with each relevant responder which has functions which are exercisable in that area in connection with the performance by that responder of such duty¹⁰.

If more than one relevant responder having functions which are exercisable in a particular local resilience area or police area is subject to the same duty in this regard, each may co-operate with any other for the purpose of identifying which of them will be the relevant responder with lead responsibility for performing that duty in relation to that area¹¹. The responder who has been so identified¹² must take the lead responsibility in performing that duty in that area¹³, must consult in the course of performing the duty the other responders which have functions which are exercisable in that area¹⁴ and are non-lead responders¹⁵ in relation to that duty¹⁶, ensure that those non-lead responders are kept informed of how the lead responder is performing the duty¹⁷, and co-operate generally with those non-lead responders¹⁸; and the non-lead responders must co-operate with the lead responder in connection with the performance of the duty by the lead responder¹⁹, provide any information²⁰ to the lead responder which it considers will assist it in performing the duty²¹, and assist the lead responder with any exercises or training that it wishes to carry out in connection with the duty²².

1 As to the counties in England and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq. As to district councils in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq.

2 As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq.

3 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

4 As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 36(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 30(a). The bodies referred to in the text and notes 1-5 supra are all category 1 responders (see the Civil Contingencies Act 2004 Sch 1 Pt 1 paras 1, 2, Pt 2 para 13; and PARA 542 ante), but the other category 1 responders specified in Sch 1 are not under the duty described in this paragraph (see s 4(1)). As to the making of regulations generally see PARA 570 post.

6 For the meaning of 'functions' see PARA 544 note 4 ante.

7 For the meaning of 'local resilience area' see PARA 550 note 6 ante. That definition effectively states that for all responders without functions in London, the local resilience area is the police area in which the responder's functions are exercisable; the legislation relating to Scottish responders carries no corresponding definition and simply refers to police areas: see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 35(1).

8 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 41(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 35(1). The duty referred to in the text is the duty under the Civil Contingencies Act 2004 s 4(1) to provide advice and assistance to the public in connection with the making of arrangements for the continuance of commercial activities by the public, or the continuance of the activities of bodies other than public or local authorities whose activities are not carried on for profit, in the event of an emergency (see PARA 549 ante). For the meaning of 'emergency' see PARA 540 ante. Until 15 May 2006, the duty under s 4(1) is to be a power rather than a duty: see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 37(a), (b); and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 31(a), (b).

9 Ie other general category 1 responders, and general category 2 responders, in England and Wales, and all other responders in Scotland: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 41(2); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 35(2). As to the category 2 responders see PARA 543 ante.

10 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 41(2); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 35(2). General

category 1 responders and general category 2 responders may co-operate with a Scottish category 1 responder in connection with the performance by that Scottish category 1 responder of the duty under the Civil Contingencies Act 2004 s 4(1) (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 42); and Scottish category 1 and Scottish category 2 responders may co-operate with county, county borough and district councils, London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly in connection with the performance by those bodies of that duty (Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 36).

11 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 9(2), (3), 41(4); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, regs 6(1), (2), 35(4).

12 In pursuant to either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 9 or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 6 (see the text and note 11 supra): see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 10(1), 11(1); and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, regs 7(1), 8(1).

13 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(a). In the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, this responsibility is stated to be required to be performed in relation to an emergency or an emergency of a particular kind: reg 7(a).

14 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(b)(i); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(b)(i).

15 If pursuant to either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 9(3) or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 6(2) (see the text and note 11 supra) one of the relevant responders is identified as being the relevant responder with lead responsibility for performing the duty to give advice and assistance in a particular local resilience area or police area (in the case of Scottish responders, in relation to that emergency or an emergency of a particular kind), the other responders in that area which are subject to that duty are referred to as 'non-lead responders': Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 9(4), 41(4)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, regs 6(3), 35(4)(b).

16 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(b)(ii); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(b)(ii). In the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, this responsibility is stated to be required to be performed in relation to non-lead category 1 responders in relation to the duty so far as it applies to the emergency or an emergency of that particular kind: reg 7(b)(ii).

17 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(c).

18 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(d). The lead responder must in particular co-operate for the purpose of ensuring so far as is reasonably practicable that the non-lead responders approve of the way in which the lead responder is performing the duty: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 10(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 7(d).

19 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(a). The non-lead responders are not, however, required to perform the relevant duty to the extent that to do so would unnecessarily duplicate the performance of that duty by the lead responder: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(d).

20 In other than sensitive information: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(b). For the meaning of 'sensitive information' see PARA 562 post.

21 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(b).

22 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 11(2)(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 8(2)(c).

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555. Duty of category 2 responders to co-operate with category 1 responders.

General category 2 responders¹ which have functions² which are exercisable in a particular local resilience area³ in England, Wales or Scotland must co-operate with each category 1 responder⁴ which has functions which are exercisable in that area in connection with the performance by that other responder of its duties⁵ to assess emergency risks, to plan for emergencies, to publish plans and assessments, and to warn, inform and advise the public about emergencies⁶.

1 As to the category 2 responders see PARA 543 ante.

2 For the meaning of 'functions' see PARA 544 note 4 ante.

3 For the meaning of 'local resilience area' see PARA 550 note 6 ante.

4 As to the category 1 responders see PARA 542 ante.

5 Ie under the Civil Contingencies Act 2004 s 2(1)(a), (b), (e) (assessment of emergency risks: see PARA 545 ante), s 2(1)(c), (d) (planning for emergencies: see PARA 546 ante), s 2(1)(f) (publishing plans and assessments: see PARA 547 ante) and s 2(1)(g) (warning, informing and advising the public: see PARA 548 ante).

6 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 4(5), 5(5). Responders may enter into protocols relating to the timing and form of co-operation, and the contact details for the individuals who are to be involved in the co-operation, in order to facilitate such co-operation: see reg 7. For the corresponding requirements imposed on Scottish category 2 responders to co-operate with general and Scottish category 1 responders see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 3(5). Provision is also made for co-operation between general category 2 responders and general category 2 responders having functions which are exercisable in Northern Ireland: see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 6(2). As to the making of regulations generally see PARA 570 post.

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556. Co-operation regarding pan-London emergencies.

In London, it is the function¹ of the London Fire and Emergency Planning Authority², on behalf of all county, district and London borough councils which have functions which are exercisable in London (and the Common Council of the City of London)³, to take the lead responsibility for maintaining plans for the purpose of ensuring that if a pan-London emergency⁴ occurs or is likely to occur the responder is able to perform its functions so far as necessary or desirable for the purpose of preventing the emergency, reducing, controlling or mitigating its effects, or taking other action in connection with it⁵. In connection with such plans, and with plans maintained for the purpose of ensuring that if an emergency occurs the responder is able to continue to perform its functions⁶, the Authority must also, at the request of such a local

authority responder, assist that responder in carrying out exercises for the purpose of ensuring that the plan is effective in relation to a pan-London emergency⁷ and in the provision of training of staff of that responder or other persons for that purpose⁸. The Authority also has the function of taking the lead responsibility for ensuring that a community risk register⁹ is maintained in each local resilience area¹⁰ in London¹¹.

Category 1 responders other than the London Fire and Emergency Planning Authority which have functions which are exercisable in London must co-operate with the Authority in connection with the performance by that Authority of these functions¹².

1 For the meaning of 'function' see PARA 544 note 4 ante.

2 As to the London Fire and Emergency Planning Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 217.

3 Ie any category 1 responder which is specified in the Civil Contingencies Act 2004 Sch 1 para 1: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 55(2)(b). As to the category 1 responders see PARA 542 ante. As to the making of regulations generally see PARA 570 post.

4 For the meanings of 'emergency' and 'pan-London emergency' see PARA 540 ante.

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 55(1)(b). As to this duty (ie under the Civil Contingencies Act 2004 s 2(1)(d)) see PARA 546 ante.

6 Ie plans maintained under ibid s 2(1)(c): see PARA 546 ante.

7 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 55(1)(c)(i).

8 Ibid reg 55(1)(c)(ii).

9 As to the community risk register see PARA 560 post.

10 For the meaning of 'local resilience area' see PARA 550 note 6 ante.

11 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 55(1)(a).

12 Ibid reg 56.

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557. Co-operation with Northern Ireland bodies.

Each general category 1 responder¹ which has functions² which are exercisable in Northern Ireland may make arrangements with a specified Northern Ireland body³ to perform jointly with that body a duty of the general category 1 responder to assess emergency risks, to plan for emergencies, to publish plans and assessments, or to warn, inform and advise the public about emergencies⁴, or for such a body to perform such a duty on behalf of the general category 1 responder⁵.

1 As to the category 1 responders see PARA 542 ante.

2 For the meaning of 'functions' see PARA 544 note 4 ante.

3 Ie a Northern Ireland department; a district council established under the Local Government Act (Northern Ireland) 1972; the Northern Ireland Housing Executive; the Fire Authority for Northern Ireland; an Education and

Library Board established under the Education and Libraries (Northern Ireland) Order 1986, SI 1986/594, art 3; a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194, art 10; a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265, art 16; the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265, art 26; the Northern Ireland Blood Transfusion Service Agency; the Health Protection Agency established by the Health Protection Agency Act 2004 s 1; the Northern Ireland Regional Medical Physics Agency; the Food Standards Agency; the Health and Safety Executive for Northern Ireland; a harbour authority, within the meaning of the Aviation and Maritime Security Act 1990 s 46(1) (see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 619), in Northern Ireland; the Northern Ireland Transport Holding Company (established by the Transport Act (Northern Ireland) 1967); Ulsterbus Limited; Citybus Limited; Northern Ireland Railways Company Limited; a person holding a licence granted under the Electricity (Northern Ireland) Order 1992, SI 1992/231, art 10(1)(b); and a person holding a licence granted under the Gas (Northern Ireland) Order 1996, SI 1996/275, art 8(1): Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 57(4). As to the making of regulations generally see PARA 570 post.

4 Ibid reg 58(1)(a). The duties referred to in the text are those under the Civil Contingencies Act 2004 s 2(1) (see PARAS 545-548 ante).

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 58(1)(b).

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B. LOCAL RESILIENCE FORUMS AND STRATEGIC CO-ORDINATING GROUPS

558. Establishment of local resilience forums and strategic co-ordinating groups.

General category 1 responders¹ which have functions² which are exercisable in a particular local resilience area³ in England or Wales must co-operate with each other, in a single forum known as a 'local resilience forum'⁴, in connection with the performance of their duties⁵ to assess emergency risks, to plan for emergencies, to publish plans and assessments, and to warn, inform and advise the public about emergencies⁶. Similarly, general category 1 responders which have functions which are exercisable in a particular local resilience area in Scotland must co-operate with each category 1 responder which has functions which are exercisable in that area, in a single forum known as a 'strategic co-ordinating group'⁷, in connection with the performance of those duties⁸.

1 As to the category 1 responders see PARA 542 ante.

2 For the meaning of 'functions' see PARA 544 note 4 ante.

3 For the meaning of 'local resilience area' see PARA 550 note 6 ante.

4 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 4(2)(b), (3). As to the making of regulations generally see PARA 570 post. Co-operation may also take the form of two or more general category 1 responders co-operating with each other: reg 4(2)(a).

5 Ie under the Civil Contingencies Act 2004 s 2(1)(a), (b), (e) (assessment of emergency risks: see PARA 545 ante), s 2(1)(c), (d) (planning for emergencies: see PARA 546 ante), s 2(1)(f) (publishing plans and assessments: see PARA 547 ante) and s 2(1)(g) (warning, informing and advising the public: see PARA 548 ante).

6 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 4(1). Responders (including category 2 responders) may enter into protocols relating to the timing and form of co-operation, and the contact details for the individuals who are to be involved in the co-operation, in order to facilitate such co-operation: see reg 7. As to the category 2 responders see PARA 543 ante. Provision is also made for co-operation

between Scottish category 1 responders with each other and with general category 1 responders (see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 3(1)-(3); and the text and notes 7-8 *infra*) and between general category 1 responders having functions which are exercisable in Northern Ireland (see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 6(1)).

7 Ibid reg 5(2)(b), (3). Co-operation may also take the form of one general category 1 responder co-operating with one or more category 1 responder: reg 5(2)(a).

8 Ibid reg 5(1). Responders may enter into protocols in order to facilitate such co-operation: see reg 7; and note 6 *supra*. Scottish category 1 responders have corresponding functions in relation to the strategic co-ordinating groups: see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 3(1), (2)(b), (3).

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559. Meetings.

As part of the local resilience forum¹, general category 1 responders² which have functions³ which are exercisable in a particular local resilience area⁴ in England and Wales must make arrangements to hold a meeting at least once every six months⁵; and as part of the strategic co-ordinating group⁶, general and Scottish category 1 responders which have functions which are exercisable in a particular local resilience area in Scotland must make arrangements to hold a meeting with the other category 1 responders having functions which are exercisable in that area at least once every six months⁷. Each general category 1 responder, and any general category 2 responder⁸ having functions exercisable in the particular local resilience area who is invited⁹, must, so far as reasonably practicable, attend or be effectively represented at such a meeting¹⁰; general category 2 responders having functions exercisable in a particular local resilience area must also consider whether it is appropriate to attend or be effectively represented at any other meeting of the relevant forum or group¹¹.

1 As to the establishment of local resilience forums see PARA 558 ante.

2 As to the category 1 responders see PARA 542 ante.

3 For the meaning of 'functions' see PARA 544 note 4 ante.

4 For the meaning of 'local resilience area' see PARA 550 note 6 ante.

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 4(4). As to the making of regulations generally see PARA 570 post.

6 As to the establishment of strategic co-ordinating groups see PARA 558 ante.

7 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 5(4). For the corresponding requirements imposed on Scottish category 1 responders with respect to the holding of such meetings see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 3(4).

8 As to the category 2 responders see PARA 543 ante.

9 I.e. invited to attend by all of those category 1 responders which have functions which are exercisable in the particular local resilience area: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 4(6)(a), 5(6)(a).

10 Ibid regs 4(4), (6)(a), 5(4), (6)(a). For the purposes of enabling general category 2 responders to comply with regs 4(6), 5(6) (see also the text and note 11 infra), the general category 1 responders which have functions which are exercisable in a particular local resilience area in England, Wales or Scotland must: (1) keep each general category 2 responder which has functions which are exercisable in that area informed of when meetings of the local resilience forum or strategic co-ordinating group are to take place (regs 4(7)(a)(i), 5(7)(a), (8)(a)(ii)), the location of such meetings (regs 4(7)(a)(ii), 5(8)(a)(ii)), and the matters which are likely to be discussed at such meetings (regs 4(7)(a)(iii), 5(8)(a)(iii)); (2) make arrangements for a category 2 responder to attend any such meetings where the category 2 responder wishes to do so (regs 4(7)(b), 5(8)(b)); and (3) consider whether a category 2 responder should be invited to attend such a meeting (regs 4(7)(c), 5(8)(c)). For the corresponding requirements imposed on Scottish responders with respect to attendance at such meetings see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 3(4), (6)(a), (7).

11 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 4(6)(b), 5(6)(b). As to the provision that must be made for enabling a general category 2 responder to comply with this requirement see note 10 supra. For the corresponding requirements imposed on Scottish responders see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 3(6)(b).

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560. The community risk register.

As part of the local resilience forum¹ or, as the case may be, strategic co-ordinating group², general and Scottish category 1 responders³ which have functions⁴ which are exercisable in a particular local resilience area or police area⁵ in England, Wales or Scotland must co-operate with each other and with any other category 1 responders which have functions which are exercisable in that area in maintaining a register ('the community risk register') of the assessments carried out⁶ by each applicable responder⁷; and for these purposes general and Scottish category 1 responders are required from time to time to inform the other category 1 responders which have functions which are exercisable in that area of the assessments⁸ carried out by them⁹ (although this requirement is subject to restrictions on national security, public safety, commercial confidentiality or data protection grounds¹⁰ and where such disclosure might obstruct the responder's activities or affect the deployment or acquisition of resources¹¹). A general category 1 responder which has functions which are exercisable in a particular local resilience area in England or Wales must from time to time provide a copy of the community risk register which it maintains under these provisions¹² to the category 1 responders which have functions which are exercisable in any neighbouring local resilience area¹³, the Secretary of State (where the responder's functions are exercisable in a local resilience area in England)¹⁴ and the National Assembly for Wales¹⁵ (where the responder's functions are exercisable in a local resilience area in Wales)¹⁶.

1 As to the establishment of local resilience forums see PARA 558 ante.

2 As to the establishment of strategic co-ordinating groups see PARA 558 ante.

3 As to the category 1 responders see PARA 542 ante.

4 For the meaning of 'functions' see PARA 544 note 4 ante.

5 For the meaning of 'local resilience area' see PARA 550 note 6 ante. That definition effectively states that for all responders without functions in London, the local resilience area is the police area in which the responder's functions are exercisable; the legislation relating to Scottish responders carries no corresponding definition and simply refers to police areas: see the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 12(1).

6 le under the Civil Contingencies Act 2004 s 2(1)(a) (see PARA 545 ante).

7 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 15(1), 17(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 12(1). As to the making of regulations generally see PARA 570 post. As to collaboration between responders and the London Fire and Emergency Planning Authority in maintaining a community risk register in each local resilience area in London see PARA 556 ante; and as to the London Fire and Emergency Planning Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 217.

8 le assessments carried out under the Civil Contingencies Act 2004 s 2(1)(a) (see PARA 545 ante).

9 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 15(2), 17(2); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 12(2).

10 The requirement to provide information under the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 15(2), 17(2) and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 12(2) (see the text and notes 8-9 supra) does not apply to the extent that an assessment carried out by a general or Scottish category 1 responder contains sensitive information and the responder has reasonable grounds to believe that informing the other category 1 responders of the assessment would adversely affect either national security (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 15(3)(a), 17(3)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 12(3)(a)) or the confidentiality of the information (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 15(3)(b), 17(3)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 12(3)(b)). For the meaning of 'sensitive information', and as to adverse effects on national security or the confidentiality of information, see PARA 562 post.

11 A general category 1 responder must consider whether it is appropriate to provide information about the risk of a particular emergency or an emergency of a particular kind occurring to a category 1 responder which is likely:

- 20 (1) to be seriously obstructed in the performance of its functions if that emergency or an emergency of that particular kind occurred (reg 18(a)); or
- 21 (2) to consider it necessary or desirable to take action to prevent that emergency or an emergency of that particular kind (reg 18(b)(i)), or to reduce, control or mitigate the effects of that emergency or an emergency of that particular kind (reg 18(b)(ii)), or otherwise take action in connection with that emergency or an emergency of that particular kind (reg 18(b)(iii)),

and would be unable to take that action without changing the deployment of resources or acquiring additional resources: reg 18.

12 le under ibid reg 15(1) (see the text and notes 1-7 supra). Note that these provisions do not impose corresponding disclosure provisions in respect of a community risk register maintained for a local resilience area in Scotland under reg 17(1).

13 Ibid reg 16(1). For these purposes a local resilience area neighbours another local resilience area if any part of first area adjoins the second: reg 16(2).

14 Ibid reg 16(4).

15 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

16 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 16(3).

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C. INFORMATION SHARING

561. Requests for information.

A general or Scottish category 1 or category 2 responder¹ (the 'requesting responder') may make a request to another general or Scottish category 1 or category 2 responder (the 'receiving responder') for information² which is held by the receiving responder and which the requesting responder reasonably requires in connection with the performance of a duty to assess emergency risks or plan for emergencies³ or to give advice and assistance to businesses and voluntary organisations⁴, or in connection with the performance of another function⁵ which relates to an emergency⁶, provided that such information is not held by the requesting responder⁷ and it is not reasonable to seek to obtain the information by other means⁸. The receiving responder must respond to the request for information⁹ and must comply with it¹⁰ except to the extent that he is satisfied that it relates to sensitive information¹¹ and that its disclosure to the requesting responder would, or would be likely to, adversely affect either national security¹² or the confidentiality of the information¹³. In addition, to the extent that the receiving responder is satisfied that a request for information relates to sensitive information which has been directly or indirectly supplied to the receiving responder by a body which deals with security matters¹⁴, the receiving responder must not comply with the request unless that body has given its consent to the provision of the information to the requesting responder¹⁵.

1 As to the category 1 responders see PARA 542 ante; and as to the category 2 responders see PARA 543 ante.

2 A 'request for information' is such a request which: (1) is in writing (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 48(1)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 42(1)(a)); (2) states the name of the requesting responder and an address for correspondence (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 48(1)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 42(1)(b)); (3) describes the information requested (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 48(1)(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 42(1)(c)); and (4) states the reason why the requesting responder requires the information in connection with the performance of a duty or function specified in the text and notes 3-6 infra (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 48(1)(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 42(1)(d)). For these purposes, a request is to be treated as made in writing where the text of the request is transmitted by electronic means, is received in legible form, and is capable of being used for subsequent reference: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 48(2)(a)-(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 42(2)(a)-(c). In urgent cases, provision of a kind that could be made by exercise of the power to make regulations in this regard may be made by way of direction: see PARA 567 post. As to the making of regulations generally see PARA 570 post.

3 Ie a duty under the Civil Contingencies Act 2004 s 2(1)(a)-(d) (see PARAS 545-546 ante). For the meaning of 'emergency' see PARA 540 ante.

4 Ie a duty under ibid s 4(1) (see PARA 549 ante).

5 For the meaning of 'function' see PARA 544 note 4 ante.

6 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 47(1), (2), (4); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 41(1), (2), (4).

7 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 47(3)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 41(3)(a).

8 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 47(3)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 41(3)(b).

9 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 50; Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 44. The receiving responder must respond before the end of such reasonable period as may be specified by the requesting responder (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 50(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 44(a)) and at such place as may be reasonably specified by that responder (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 50(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 44(b)).

10 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 49(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 43(1). A person or body must have regard to any guidance issued by a Minister of the Crown or the Scottish Ministers regarding the disclosure of information on request: see the Civil Contingencies Act 2005 s 6(6)(b); and PARA 568 post. As to Ministers of the Crown see PARA 541 ante. As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

11 The information of the kind specified by the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1) and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1) (see PARA 562 post).

12 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 49(2)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 43(2)(a). This ground for refusal applies with respect to sensitive information of the kind specified by the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1)(a) and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(a) (see PARA 562 post).

13 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 49(2)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 43(2)(b). This ground for refusal applies with respect to sensitive information of the kind specified by the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1)(b), (c) or (d) and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(b), (c) or (d) (see PARA 562 post). If a responder refuses to comply with a request for information on the grounds that its disclosure would, or would be likely to, adversely affect the confidentiality of the information, it must give reasons: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 49(3); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 43(3).

14 The Security Service (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 471), the Secret Intelligence Service (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 472), the Government Communications Headquarters (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 473), and the National Criminal Intelligence Service (see POLICE vol 36(1) (2007 Reissue) PARAS 430-476): Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 3(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 2(1).

15 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 49(4); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 43(4). Such consent may contain conditions: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 49(4); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 43(4).

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NOTE 14--For 'National Criminal Intelligence Service' read 'Serious Organised Crime Agency': SI 2005/2042 reg 3(1) (definition amended by SI 2006/594).

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562. Restriction on use, publication and disclosure of sensitive information.

A general or Scottish category 1 or category 2 responder¹ must not use² any sensitive information (that is, information the disclosure of which to the public would, or would be likely to, adversely affect national security³ or public safety⁴ or prejudice the commercial interests of any person⁵, and information which is personal data⁶) which it has received⁷ other than for the

purpose of performing the function⁸ for which, or in connection with which, the information was requested⁹, and may not publish or disclose to any person any such information so received¹⁰.

There are exceptions to these general prohibitions. A responder may use, publish or disclose information the disclosure of which would, or would be likely to, adversely affect national security or public safety¹¹ where consent¹² for the use, publication or disclosure has been given by either the originator of the information¹³ or (if different) a Minister of the Crown or a member of the Scottish Executive¹⁴; and a responder may use, publish or disclose personal data or information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person¹⁵ where consent for the use, publication or disclosure has been given by the person to whom the information relates¹⁶. A responder may also publish or disclose (but not use) personal data or information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person¹⁷ where it is satisfied that the public interest in publication or disclosure outweighs the legitimate interests of the person to whom that information relates¹⁸ and has informed that person of its intention to publish or disclose the information and its reasons for being so satisfied¹⁹. A responder must also publish or disclose sensitive information of any kind where required²⁰ so to do²¹.

1 As to the category 1 responders see PARA 542 ante; and as to the category 2 responders see PARA 543 ante.

2 For these purposes, 'use' does not include publication or disclosure: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 52(5); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 46(5). As to the making of regulations generally see PARA 570 post.

3 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 3(1), 45(1)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, regs 2(1), 39(1)(a).

A certificate signed by a Minister of the Crown or a member of the Scottish Executive certifying that disclosure of information to the public would, or would be likely to, adversely affect national security is conclusive evidence of that fact: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 46(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 40(1). The power conferred by the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 46(1) is not exercisable except by a minister who is a member of the Cabinet, the Attorney General, the Advocate General for Scotland or the Attorney General for Northern Ireland: reg 46(5).

Such a certificate may identify the information to which it applies by means of a general description and may be expressed to have prospective effect: reg 46(2); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 40(2). A document purporting to be a certificate under the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 46(1) or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 40(1) may be received in evidence and deemed to be such a certificate unless the contrary is proved (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 46(3); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 40(3)); and a document which purports to be certified by or on behalf of a Minister of the Crown or a member of the Scottish Executive as a true copy of a certificate issued by that minister or member is evidence of that certificate in any legal proceedings (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 46(4); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 40(4)).

As to Ministers of the Crown see PARA 541 ante. As to the Scottish Executive see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(b).

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1)(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(c).

6 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1)(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(d). The reference in the text to personal data is a reference to personal data within the meaning of the Data Protection Act 1998 s 1(1) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 506): Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1)(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(d).

Where information is 'data' for the purposes of the Data Protection Act 1998 s 1(1) (as amended), it is 'sensitive information' for these purposes if its disclosure to a member of the public would contravene any of the data protection principles (see Sch 1 Pt 1; and CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARAS 507-517) or s 10 (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 526): Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(2)(a)(i), (ii); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(2)(a)(i), (ii). Where information is not 'data' for such purposes, it is 'sensitive information' for these purposes if its disclosure to a member of the public would contravene any of the data protection principles if the exemptions in the Data Protection Act 1998 s 33A(1) (as added) (which relates to manual data held by public authorities: see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 555) were disregarded: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(2)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(2)(b). In either case, personal data is 'sensitive information' for these purposes only if by virtue of any provision of the Data Protection Act 1998 Pt IV (ss 27-39) (as amended) (exemptions) the information is exempt from s 7(1)(c) (data subject's right of access to personal data: see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 524): Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(3); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(3).

In determining for these purposes whether anything done before 24 October 2007 would contravene the data protection principles, the exemptions in the Data Protection Act 1998 Sch 8 Pt III (as amended) (transitional relief) are disregarded: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(4); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(4).

7 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 52(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 52(1). The sensitive information to which the restrictions on use and disclosure relates is any such information received by the responder under or by virtue of a provision of either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042 or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494: see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 51(1)(a), (b), 52(1)(a), (b); and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, regs 45(1)(a), (b), 46(1)(a), (b).

8 For the meaning of 'function' see PARA 544 note 4 ante.

9 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 52(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 46(1).

10 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 51(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(1). A person or body must have regard to any guidance issued by a Minister of the Crown or the Scottish Ministers regarding the disclosure of information on request: see the Civil Contingencies Act 2004 s 6(6)(b); and PARA 568 post. The Health and Safety at Work etc Act 1974 s 28(2), (7) (restrictions on disclosure of information: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 382) do not apply to the disclosure of information by the Health and Safety Executive to another responder if the disclosure is made: (1) in connection with the performance by that other responder of a duty under the Civil Contingencies Act 2004 s 2 (see PARAS 544-548 ante) or s 4 (see PARA 549 ante) (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 54(1)(a)(i)), a provision of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042 (reg 54(1)(a)(ii)), or regulations made by the Scottish Ministers under the Civil Contingencies Act 2004 Pt 1 (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 54(1)(a)(iii)); (2) in connection with another function of that responder which relates to emergencies (reg 54(1)(b)); or (3) in connection with a function of the Health and Safety Executive which relates to emergencies (reg 54(1)(c)). For these purposes, it is immaterial whether the disclosure is made pursuant to a request made under reg 47 (see PARA 561 ante): reg 54(2). As to the Health and Safety Executive (which for these purposes includes an officer thereof: reg 54(3)) see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq. As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

11 The sensitive information of the kind specified by *ibid* reg 45(1)(a) or (b) or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(a) or (b) (see the text and notes 3-4 *supra*), although the exception relating to the publication or disclosure of such information does not apply to information the disclosure of which would, or would be likely to, adversely affect national security if a Minister of the Crown or a member of the Scottish Executive has issued a certificate in writing indicating that publication or disclosure of the information would adversely affect national security: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 51(3); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(3).

12 Such consent may identify the information to which it applies by means of a general description, may be expressed to have prospective effect, and may include conditions: Civil Contingencies Act 2004 (Contingency

Planning) Regulations 2005, SI 2005/2042, regs 51(4)(a)-(c), 52(3)(a)-(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(4)(a)-(c), 46(3)(a)-(c).

13 For these purposes, 'originator of the information' means: (1) if the information has been directly or indirectly supplied to the responder by a body which deals with security matters, that body (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 51(5)(a), 52(4)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(5)(a), 46(4)(a)); (2) if that provision does not apply, the information takes the form of a document and that document has been created by a public authority, that public authority (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 51(5)(b), 52(4)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(5)(b), 46(4)(b)); and (3) otherwise, the person who supplied the information to the responder (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 51(5)(c), 52(4)(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(5)(c), 46(4)(c)).

14 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 51(2)(a), 52(2)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(2)(a), 46(2)(a)). See note 11 supra.

15 Ie sensitive information of the kind specified by either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1)(c) or (d) or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(c) or (d) (see the text and notes 5-6 supra).

16 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, regs 51(2)(b), 52(2)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(2)(b), 46(2)(b).

17 Ie sensitive information of the kind specified by either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 45(1)(c) or (d) or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 39(1)(c) or (d) (see the text and notes 5-6 supra): see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 51(6)(a); and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(6)(a). This exception operates only in relation to such information if it is not also information the disclosure of which would, or would be likely to, adversely affect national security or public safety: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 51(6)(b); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(6)(b).

18 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 51(6)(c); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(6)(c).

19 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 51(6)(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(6)(d).

20 Ie under another provision of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042 or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494. As to the circumstances in which a responder may be required to disclose information see PARAS 566-567 post.

21 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 51(1); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 45(1).

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563. Security of sensitive information.

Each general or Scottish category 1 or category 2 responder¹ must have in place arrangements for ensuring that the confidentiality of sensitive information² received³ or created⁴ by it is not adversely affected⁵. Such arrangements must include arrangements for ensuring that sensitive information is clearly identifiable as such⁶ and is stored and transferred⁷ in a secure manner⁸ and that the information may be accessed only by those persons who are involved in the

performance of a duty to assess emergency risks or plan for emergencies⁹, or to give advice and assistance to businesses and voluntary organisations¹⁰, or another function¹¹ which relates to an emergency¹², and, as a result, need to have such access¹³.

1 As to the category 1 responders see PARA 542 ante; and as to the category 2 responders see PARA 543 ante.

2 For the meaning of 'sensitive information' see PARA 562 ante.

3 Information received by a general category 1 or category 2 responder or a Scottish category 1 responder under or by virtue of a provision of either the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042 or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494: see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 53(1)(a), (b); and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 47(1)(a), (b).

4 Information created by the responder in discharging its duties under the Civil Contingencies Act 2004, the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042 or the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494: see the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 53(1)(c); and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 47(1)(c).

5 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 53(2); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 47(2).

6 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 53(3)(a); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 47(3)(a).

7 This includes transferral by electronic means: Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 53(3)(d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 47(3)(d).

8 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 53(3)(c), (d); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 47(3)(c), (d).

9 Information is a duty under the Civil Contingencies Act 2004 s 2 (see PARAS 544-548 ante). For the meaning of 'emergency' see PARA 540 ante.

10 Information is a duty under ibid s 4 (see PARA 549 ante). For the meaning of 'voluntary organisation' see PARA 546 note 7 ante.

11 For the meaning of 'function' see PARA 544 note 4 ante.

12 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 53(3)(b)(i); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 47(3)(b)(i).

13 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 53(3)(b)(ii); Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 47(3)(b)(ii).

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(iii) Intervention Powers of Ministers

564. Power to require responders to act.

A Minister of the Crown¹ may by order² require a general category 1 responder, and the Scottish Ministers may by order require a Scottish category 1 responder, to perform a function for the

purpose of preventing the occurrence of an emergency³, reducing, controlling or mitigating the effects of an emergency⁴, or taking other action in connection with an emergency⁵. If the Scottish Ministers make such an order, a Minister of the Crown may make an order permitting or requiring a general category 1 or category 2 responder to co-operate⁶ with, and provide information to⁷, the Scottish category 1 responder in connection with the duty⁸; and corresponding powers are conferred on the Scottish Ministers in respect of an order made by a Minister of the Crown⁹. Compliance with such orders is obligatory¹⁰, and Ministers of the Crown and general category 1 and category 2 responders may bring proceedings in the High Court in respect of any failure by a general category 1 or category 2 responder to comply¹¹.

1 As to Ministers of the Crown see PARA 541 ante.

2 Such an order may: (1) require a person or body to consult a specified person or body or class of person or body (Civil Contingencies Act 2004 s 5(4)(a)); (2) permit, require or prohibit collaboration, to such extent and in such manner as may be specified (s 5(4)(b)); (3) permit, require or prohibit delegation, to such extent and in such manner as may be specified (s 5(4)(c)); (4) permit or require a general or Scottish category 1 or category 2 responder (as the case may be) to co-operate, to such extent and in such manner as may be specified, with a general category 1 responder in connection with a duty under the order (s 5(4)(d), (5)(a)); (5) permit or require a general or Scottish category 1 or category 2 responder (as the case may be) to provide information in connection with a duty under the order, whether on request or in other specific circumstances, to a general category 1 responder (s 5(4)(e), (5)(a)); (6) confer a function on a Minister of the Crown, on the Scottish Ministers, on the National Assembly for Wales, on a Northern Ireland department (where the order is made by a Minister of the Crown), on the Scottish Ministers only (where the order is made by the Scottish Ministers), or on any other specified person or body (and a function conferred may, in particular, be a power or duty to exercise a discretion) (s 5(4)(f), (5)(b)); (7) make provision which applies generally or only to a specified person or body or only in specified circumstances (s 5(4)(g)); and (8) make different provision for different persons or bodies or for different circumstances (s 5(4)(h)). As to the National Assembly for Wales, the Scottish Ministers and Ministers in Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the making of orders generally see PARA 571 post.

As to the category 1 responders see PARA 542 ante; and as to the category 2 responders see PARA 543 ante. An order under Pt 1 (ss 1-18) (as amended) may, if addressing the provision or disclosure of information, make provision about timing (s 12(a)), the form in which information is provided (s 12(b)), the use to which information may be put (s 12(c)), and storage and disposal of information (s 12(d), (e)). For the meaning of 'function' see PARA 544 note 4 ante.

3 Ibid s 5(1)(a), (2)(a). For the meaning of 'emergency' see PARA 540 ante.

4 Ibid s 5(1)(b), (2)(b).

5 Ibid s 5(1)(c), (2)(c). In urgent cases, provision of a kind that could be made by the exercise of these powers may be made by way of direction: see PARA 565 post. At the date at which this volume states the law no such order had been made.

6 Co-operation under such an order is to such extent and in such manner as may be specified: *ibid* s 15(6)(a).

7 The provision of information under such an order may be either on request or in other specified circumstances: *ibid* s 15(6)(b).

8 Ibid s 15(6)(1), (b). At the date at which this volume states the law no such order had been made.

9 See *ibid* s 15(5).

10 Ibid ss 5(3), 15(7)(a), (8)(a), (b).

11 See *ibid* s 10(1); and PARA 569 post.

565. Power to direct responders to act in matters of urgency.

Where there is an urgent need for a general category 1 responder¹ to perform a function² for the purpose of preventing the occurrence of, reducing, controlling or mitigating the effects of, or taking other action in connection with, an emergency³, but there is insufficient time for the requisite order to be made⁴, a Minister of the Crown⁵ may by written⁶ direction make provision of a kind that could be made by such an order⁷. The minister must as soon as is reasonably practicable revoke such a direction and may re-enact, if or in so far as he thinks it desirable, the substance of the direction by way of an order⁸; a direction will in any case cease to have effect at the end of the period of 21 days beginning with the day on which it is given⁹.

1 As to the category 1 responders see PARA 542 ante.

2 For the meaning of 'function' see PARA 544 note 4 ante.

3 Ie where there is an urgent need to make provision of a kind that could be made by an order under the Civil Contingencies Act 2004 s 5(1) (see PARAS 564 ante, 571 post): s 7(1)(a). For the meaning of 'emergency' see PARA 540 ante.

4 Ibid s 7(1)(b).

5 As to Ministers of the Crown see PARA 541 ante.

6 Civil Contingencies Act 2004 s 7(3).

7 Ibid s 7(2). A provision of such a direction is treated for all purposes as if it were a provision of an order under s 5(1) (see PARAS 564 ante, 571 post): s 7(5). A Minister of the Crown must consult the National Assembly for Wales before giving any such direction, and in certain circumstances may not proceed to give a direction without the Assembly's consent: see s 16(1)(e), (2), (3)(d), (4); and PARA 572 post. Similar powers are conferred on the Scottish Ministers: see s 8. As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 Ibid s 7(4)(b). The minister may revoke or vary the direction by further direction: s 7(4)(a).

9 Ibid s 7(4)(c). This is without prejudice to the power to give a new direction (see the text and note 8 supra): s 7(4)(c).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(iii) Intervention Powers of Ministers/566. Power to require information.

566. Power to require information.

A Minister of the Crown¹ may require a general category 1 or category 2 responder² to provide information about action taken for the purpose of complying with its civil protection duties³ or to explain why it has not taken action for the purpose of complying with any such duty⁴. Compliance with such a requirement is obligatory⁵, and Ministers of the Crown and general category 1 and category 2 responders may bring proceedings in the High Court in respect of any failure by a general category 1 or category 2 responder to comply⁶.

1 As to Ministers of the Crown see PARA 541 ante.

2 As to the category 1 responders see PARA 542 ante; and as to the category 2 responders see PARA 543 ante.

3 Civil Contingencies Act 2004 s 9(1)(a). A responder's civil protection duties are its duties under Pt 1 (ss 1-18) (as amended) (see PARA 544 et seq ante). A requirement under s 9(1) may specify a period within which and

the form in which the information or explanation is to be provided: s 9(3)(a), (b). Similar powers are conferred on the Scottish Ministers: see s 9(2). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Ibid s 9(1)(b). See note 3 *supra*.

5 Ibid s 9(4).

6 See *ibid* s 10(1); and PARA 569 *post*.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(iii) Intervention Powers of Ministers/567. Power to direct responders to disclose information in matters of urgency.

567. Power to direct responders to disclose information in matters of urgency.

Where there is an urgent need for a general category 1 or category 2 responder¹ to be required or permitted to disclose information on request to another person or body² but there is insufficient time for the necessary regulations to be made³, a Minister of the Crown⁴ may by written⁵ direction make provision of a kind that could be made by such regulations⁶. The minister must as soon as is reasonably practicable revoke such a direction and may re-enact, if or in so far as he thinks it desirable, the substance of the direction by way of regulations⁷; a direction will in any case cease to have effect at the end of the period of 21 days beginning with the day on which it is given⁸.

1 As to the category 1 responders see PARA 542 *ante*; and as to the category 2 responders see PARA 543 *ante*.

2 Ie where there is an urgent need to make provision of a kind that could be made by regulations under the Civil Contingencies Act 2004 s 6(1) (see PARA 570 *post*): s 7(1)(a). As to the regulations which have been made under s 6(1) see PARAS 561-563 *ante*. For the meaning of 'emergency' see PARA 540 *ante*.

3 Ibid s 7(1)(b).

4 As to Ministers of the Crown see PARA 541 *ante*.

5 Civil Contingencies Act 2004 s 7(3).

6 Ibid s 7(2). A provision of such a direction is treated for all purposes as if it were a provision of regulations under s 6(1): s 7(5). A Minister of the Crown must consult the National Assembly for Wales before giving any such direction, and in certain circumstances may not proceed to give a direction without the Assembly's consent: see s 16(1)(d), (2), (3)(d), (4); and PARA 572 *post*. Similar powers are conferred on the Scottish Ministers: see s 8. As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Ibid s 7(4)(b). The minister may revoke or vary the direction by further direction: s 7(4)(a).

8 Ibid s 7(4)(c). This is without prejudice to the power to give a new direction (see the text and note 7 *supra*): s 7(4)(c).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(iii) Intervention Powers of Ministers/568. Guidance and assessments.

568. Guidance and assessments.

A Minister of the Crown¹ may issue to a general category 1 or category 2 responder² guidance as to the extent of a duty³ to assess the risk of, and plan for, an emergency⁴ and the manner in which such a duty is to be performed⁵; may issue to a local authority category 1 responder⁶ guidance as to the extent of the duty⁷ to give advice and assistance to businesses and voluntary organisations⁸ and the manner in which such a duty is to be performed⁹; and may issue guidance to any person or body about a matter addressed in regulations concerning cross-border collaboration in the performance of any of the aforementioned duties¹⁰ and about the performance of functions¹¹ under regulations requiring or permitting the disclosure of information on request¹². A Minister of the Crown, the National Assembly for Wales, the Office of the First Minister or Deputy First Minister in Northern Ireland and the Scottish Ministers¹³ may also issue to a general category 1 responder written¹⁴ guidance as to the likelihood of a particular emergency or an emergency of a particular kind occurring¹⁵ and as to the extent to which a particular emergency or an emergency of a particular kind would or might (if it occurred) cause damage to human welfare, the environment or security¹⁶, and may also issue written¹⁷ assessments of any of these matters¹⁸. The Scottish Ministers may also issue guidance and assessments on these matters to Scottish category 1 responders or any class of Scottish category 1 responders¹⁹. A Minister of the Crown must consult the National Assembly for Wales before issuing any guidance which relates wholly or partly to Wales, and in certain circumstances may not proceed to issue such guidance without the Assembly's consent²⁰.

Responders to whom guidance is given are required to have regard to it²¹.

1 As to Ministers of the Crown see PARA 541 ante.

2 As to the category 1 responders see PARA 542 ante; and as to the category 2 responders see PARA 543 ante.

3 Ie under the Civil Contingencies Act 2004 s 2(1) (see PARAS 545-548 ante).

4 Ibid s 3(1). For the meaning of 'emergency' see PARA 540 ante. As to the circumstances in which general category 1 responders are required to assess the risks of an emergency see PARA 544 ante. Guidance may be issued about any of the matters in connection with which regulations may be made under s 2(5) (see PARA 570 post): s 3(1). Similar powers are conferred on the Scottish Ministers in respect of Scottish responders: see s 3(2).

5 Ibid s 3(1). See note 4 supra.

6 Ie county, county borough and district councils, London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly: see ibid Sch 1 paras 1, 2; and PARA 542 ante.

7 Ie under ibid s 4(1) (see PARA 549 ante).

8 For the meaning of 'voluntary organisation' see PARA 546 note 7 ante.

9 Civil Contingencies Act 2004 s 4(6). Guidance may be issued about any of the matters in connection with which regulations may be made under s 4(2) (see PARA 570 post): s 4(6). Similar powers are conferred on the Scottish Ministers in respect of Scottish local authority responders: see s 4(7).

10 Ibid s 15(4). As to regulations see PARA 570 post. Corresponding powers are conferred on the Scottish Ministers: see s 15(2).

11 For the meaning of 'functions' see PARA 544 note 4 ante.

12 Civil Contingencies Act 2004 s 6(4). As to the regulations requiring or permitting the disclosure of information on request see PARAS 561-563 ante. Similar powers are conferred on the Scottish Ministers: see s 6(5).

13 As to the National Assembly for Wales, the Scottish Ministers and Ministers in Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

14 Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, SI 2005/2042, reg 14(11).

15 Ibid reg 14(1)(a), (4)(a), (6)(a), (8)(a). The powers of the National Assembly for Wales, the Office of the First Minister or Deputy First Minister and the Scottish Ministers extend only to general category 1 responders having functions which are exercisable in Wales, Northern Ireland or Scotland, as the case may be: reg 14(4), (6), (8).

16 Ibid reg 14(1)(b), (4)(b), (6)(b), (8)(b). For the meaning of 'United Kingdom' see PARAS 402 note 4, 540 note 4 ante. The power of a Minister of the Crown to issue guidance in this regard extends to damage to human welfare or the environment anticipated to occur in a place in the United Kingdom (reg 14(1)(b)), while the powers of the National Assembly for Wales, the Office of the First Minister or Deputy First Minister and the Scottish Ministers is limited to damage anticipated in a place in Wales, Northern Ireland or Scotland, as the case may be (reg 14(4)(b), (6)(b), (8)(b)).

17 Ibid reg 14(11).

18 Ibid reg 14(2), (5), (7), (10). The powers of the National Assembly for Wales, the Office of the First Minister or Deputy First Minister and the Scottish Ministers extend only to general category 1 responders having functions which are exercisable in Wales, Northern Ireland or Scotland, as the case may be: reg 14(5), (7), (9).

19 See the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005, SSI 2005/494, reg 11(1), (2), (4).

20 See the Civil Contingencies Act 2004 s 16(1)(b), (2), (3)(c), (4); and PARA 572 post.

21 Ibid ss 3(3)(b), 4(8)(b), 6(6)(b), 15(7)(b). Ministers of the Crown and general category 1 and category 2 responders may bring proceedings in the High Court in respect of any failure to comply with regulations: see s 10(1); and PARA 569 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(2) RISK ASSESSMENTS AND EMERGENCY PLANS/(iv) Proceedings for Failure to Comply/569. Bringing of proceedings.

(iv) Proceedings for Failure to Comply

569. Bringing of proceedings.

Ministers of the Crown¹ and general category 1 and category 2 responders² may bring proceedings in the High Court in respect of any failure by a general category 1 or category 2 responder to comply³ with:

191 (1) a statutory duty to assess emergency risks⁴, to plan for emergencies⁵, to publish plans and assessments⁶, to warn, inform and advise the public about emergencies⁷, or to give advice and assistance to businesses and voluntary organisations⁸;

192 (2) regulations made in respect of such duties⁹;

193 (3) guidance issued in respect of such duties¹⁰;

194 (4) regulations requiring or permitting the disclosure of information between responders on request¹¹;

195 (5) guidance issued in respect of the disclosure of information¹²;

196 (6) an order requiring the performance of a function¹³ for the purpose of preventing the occurrence of, or reducing, controlling or mitigating the effects of, or taking other action in connection with, an emergency¹⁴;

197 (7) an order requiring cross-border collaboration with regard to such matters¹⁵; and

198 a requirement for information about actions taken or not taken for the purpose of complying with the responder's civil protection duties¹⁶.

Corresponding provision is made enabling Scottish Ministers and Scottish category 1 and category 2 responders to bring proceedings¹⁷.

- 1 As to Ministers of the Crown see PARA 541 ante.
- 2 As to the category 1 responders see PARA 542 ante; and as to the category 2 responders see PARA 543 ante.
- 3 See the Civil Contingencies Act 2004 s 10(1). A Minister of the Crown must consult the National Assembly for Wales before bringing proceedings relating wholly or partly to Wales, and in certain circumstances may not proceed to bring proceedings without the Assembly's consent: see s 16(1)(f), (2), (3)(e), (4); and PARA 572 post. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 4 le under ibid s 2(1)(a), (b), (e) (see PARA 545 ante).
- 5 le under ibid s 2(1)(c), (d) (see PARA 546 ante).
- le under ibid s 2(1)(f) (see PARA 547 ante).
- 7 le under ibid s 2(1)(g) (see PARA 548 ante).
- 8 le under ibid s 4(1) (see PARA 549 ante). For the meaning of 'voluntary organisation' see PARA 546 note 7 ante.
- 9 As to the regulations see ibid ss 2(3), (4), 3(3)(a); and PARAS 544 et seq ante, 570 post.
- 10 As to such guidance see ibid s 3(1), (2), (3)(b); and PARAS 544 et seq, 568 ante.
- 11 As to the regulations see ibid s 6(1)-(3), (6)(a); and PARAS 561-563 ante, 570 post.
- 12 As to such guidance see ibid s 6(4), (5), (6)(b); and PARAS 561-563, 568 ante.
- 13 For the meaning of 'function' see PARA 544 note 4 ante.
- 14 See the Civil Contingencies Act 2004 s 5; and PARA 564 ante. For the meaning of 'emergency' see PARA 540 ante.
- 15 See ibid s 15(1), (3), (5), (6), (7)(a), (8); and PARAS 564 ante, 570 post.
- As to such requirements see ibid s 9; and PARA 566 ante.
- See s 11.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(3) EXERCISE OF MINISTERIAL POWERS/570. Regulations.

(3) EXERCISE OF MINISTERIAL POWERS

570. Regulations.

The provisions requiring category 1 responders¹ to make and publicise risk assessments and emergency plans², to provide warnings and advice about emergency risks³, and to operate collaboratively with regard to such duties⁴, derive from the Civil Contingencies Act 2004⁵ and from regulations made thereunder⁶. Such regulations may, in particular:

- 199 (1) make provision about the kind of emergency in relation to which a specified person or body is or is not to perform a duty to assess emergency risks, to plan for emergencies, to publish plans and assessments, to warn, inform and advise the public about emergencies, or to give advice and assistance to businesses and voluntary organisations⁷;

- 200 (2) permit or require a person or body not to perform any such duty in specified circumstances or in relation to specified matters⁸;
- 201 (3) make provision as to the timing of the performance of any such duty⁹;
- 202 (4) require a person or body to consult a specified person or body or class of person or body before or in the course of performing any such duty¹⁰;
- 203 (5) permit or require a county council to perform any such duty on behalf of a district council within the area of the county council¹¹;
- 204 (6) permit, require or prohibit collaboration, to such extent and in such manner as may be specified, by persons or bodies in the performance of any such duty¹²;
- 205 (7) permit, require or prohibit delegation, to such extent and in such manner as may be specified, of the performance of any such duty¹³;
- 206 (8) permit or require general category 1 and category 2 responders¹⁴ to co-operate, to such extent and in such manner as may be specified, with general category 1 responders in connection with the performance of any such duty¹⁵;
- 207 (9) permit or require general category 1 and category 2 responders to provide information, either on request or in other specified circumstances, to general category 1 responders in connection with the performance of any such duty¹⁶;
- 208 (10) permit or require a person or body to perform (wholly or partly) a duty to assess emergency risks¹⁷ having regard to, or by adopting or relying on, work undertaken by another specified person or body¹⁸;
- 209 (11) permit or require a person or body, in maintaining an emergency plan¹⁹, to have regard to the activities of bodies (other than public or local authorities) whose activities are not carried on for profit²⁰;
- 210 (12) make provision about the extent of, and the degree of detail to be contained in, an emergency plan²¹;
- 211 (13) require an emergency plan to include provision for the carrying out of exercises²²;
- 212 (14) require an emergency plan to include provision for the training of staff or other persons²³;
- 213 (15) permit a person or body to make arrangements with another person or body, as part of emergency planning²⁴ or giving advice and assistance to businesses and voluntary organisations²⁵, for the performance of a function on behalf of the first person or body²⁶;
- 214 (16) confer a function on a Minister of the Crown, the Scottish Ministers, the National Assembly for Wales, a Northern Ireland department²⁷ or on any other specified person or body (and a function conferred may, in particular, be a power or duty to exercise a discretion)²⁸;
- 215 (17) make provision which has effect despite other provision made by or by virtue of an enactment²⁹;
- 216 (18) make provision which applies generally or only to a specified person or body or only in specified circumstances³⁰;
- 217 (19) permit a body to make a charge for advice or assistance provided³¹ on request³²; and
- 218 (20) make different provision for different persons or bodies or for different circumstances³³.

Pursuant to the provisions requiring responders to make and implement risk assessments and plans and to give advice and assistance to business and voluntary organisations³⁴, ministers are also empowered, where a Scottish category 1 responder has such a duty, to make regulations permitting or requiring a general category 1 or category 2 responder to co-operate, to such extent and in such manner as may be specified, with the Scottish category 1 responder in connection with the performance of the duty³⁵, and permitting or requiring a general category 1 or category 2 responder to provide information, either on request or in other specified circumstances, to the Scottish category 1 responder in connection with the performance of the

duty³⁶. Ministers may also make regulations requiring or permitting one general category 1 or category 2 responder to disclose information on request to another³⁷ in connection with a function of either responder which relates to emergencies³⁸.

Regulations may make provision which applies generally or only in specified circumstances or for a specified purpose³⁹, may make different provision for different circumstances or purposes⁴⁰, and may make incidental, consequential or transitional provision⁴¹, and must be complied with⁴².

Regulations are made by statutory instrument⁴³ subject to annulment in pursuance of a resolution of either House of Parliament⁴⁴. A Minister of the Crown must consult the National Assembly for Wales before making any regulations which relate wholly or partly to Wales, and in certain circumstances may not proceed to make such regulations without the Assembly's consent⁴⁵. Ministers are also required to consult the Scottish Ministers with respect to the making of regulations affecting Scotland⁴⁶.

1 As to the category 1 responders see PARA 542 ante.

2 See PARAS 544-548 ante.

3 See PARAS 548-549 ante. For the meaning of 'emergency' see PARA 540 ante.

4 See PARAS 550-560 ante.

5 I.e. the Civil Contingencies Act 2004 ss 2(1), 4(1).

6 Ibid s 2(3) empowers a Minister of the Crown, in relation to a general category 1 responder, to make regulations about the extent of a duty under s 2(1) (see PARAS 545-548 ante) and the manner in which such a duty is to be performed, and s 4(2) empowers a Minister of the Crown, in relation to county, county borough and district councils, London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly to make regulations about the extent of the duty under s 4(1) (see PARAS 549, 553-554 ante) and the manner in which that duty is to be performed. As to Ministers of the Crown see PARA 541 ante.

As to the counties in England and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq. As to district councils in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq. As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

Similar powers are conferred on the Scottish Ministers: see ss 2(4), (6), 4(3).

7 Ibid ss 2(5)(a), 4(4)(b). The duties referred to in the text are those under s 2(1)(a), (b), (e) (assessment of emergency risks: see PARA 545 ante), s 2(1)(c), (d) (planning for emergencies: see PARA 546 ante), s 2(1)(f) (publishing plans and assessments: see PARA 547 ante), s 2(1)(g) (warning, informing and advising the public: see PARA 548 ante) and s 4(1) (advice and assistance to businesses and voluntary organisations: see PARA 549 ante). For the meaning of 'voluntary organisation' see PARA 546 note 7 ante.

8 Ibid ss 2(5)(b), 4(4)(b).

9 Ibid ss 2(5)(c), 4(4)(b).

10 Ibid ss 2(5)(d), 4(4)(b).

11 Ibid ss 2(5)(e), 4(4)(b).

12 Ibid ss 2(5)(f), 4(4)(b).

13 Ibid ss 2(5)(g), 4(4)(b).

14 As to the category 2 responders see PARA 543 ante.

15 Civil Contingencies Act 2004 ss 2(5)(h), 4(4)(b).

16 Ibid ss 2(5)(i), 4(4)(b). Regulations under Pt 1 (ss 1-18) (as amended) may, if addressing the provision or disclosure of information, make provision about timing (s 12(a)), the form in which information is provided (s 12(b)), the use to which information may be put (s 12(c)), and storage and disposal of information (s 12(d), (e)).

17 Ie under ibid s 2(1)(a) or (b) (see PARA 545 ante).

18 Ibid s 2(5)(j).

19 Ie under ibid s 2(1)(c) or (d) (see PARA 546 ante).

20 Ibid s 2(5)(k).

21 Ibid s 2(5)(l).

22 Ibid s 2(5)(m).

23 Ibid s 2(5)(n).

24 Ie planning undertaken under ibid s 2(1)(c) or (d) (see PARA 546 ante).

25 Ie under ibid s 4(1) (see PARAS 549, 553-554 ante).

26 Ibid ss 2(5)(o), 4(4)(b).

27 As to the National Assembly for Wales, the Scottish Ministers and Ministers in Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

28 Civil Contingencies Act 2004 ss 2(5)(p), 4(4)(b). For the meaning of 'function' see PARA 544 note 4 ante.

29 Ibid ss 2(5)(q), 4(4)(b). As to the meaning of 'enactment' see PARA 544 note 4 ante.

30 Ibid ss 2(5)(r), 4(4)(b).

31 Ie under ibid s 4(1) (see PARA 549 ante).

32 Ibid s 4(4)(a). Regulations by virtue of s 4(4)(a) must provide that a charge for advice or assistance may not exceed the aggregate of the direct costs of providing the advice or assistance (s 4(5)(a)) and a reasonable share of any costs indirectly related to the provision of the advice or assistance (s 4(5)(b)).

33 Ibid ss 2(5)(s), 4(4)(b).

34 Ie a duty under ibid s 2 or s 4 (see PARAS 544-557 ante).

35 Ibid s 15(3)(a). The Scottish Ministers have powers corresponding to those conferred on a Minister of the Crown by s 15(3): see s 15(1). As to the giving of guidance about a matter addressed in any such regulations para 568 ante.

36 Ibid s 15(3)(b). See notes 16, 35 supra.

37 Ibid s 6(1). See note 16 supra; and PARAS 561-563 ante. In urgent cases, the provision which may be made by exercise of these powers may be made by way of direction: see PARA 567 ante. The Scottish Ministers have powers corresponding to those conferred on a Minister of the Crown by s 6(1), (3): see s 6(2).

38 Ibid s 6(3). See notes 16, 37 supra.

39 Ibid s 17(6)(a).

40 Ibid s 17(6)(b).

41 Ibid s 17(6)(c).

42 Ibid ss 3(3)(a), 4(8)(a), 6(6)(a), 15(7)(a). Ministers of the Crown and general category 1 and category 2 responders may bring proceedings in the High Court in respect of any failure to comply with regulations: see s 10(1); and PARA 569 ante.

43 Ibid s 17(1).

44 Ibid s 17(4). Similar provision is made in respect of regulations made by the Scottish Ministers: see s 17(5).

45 See ibid s 16(1)(a), (2), (3)(a), (4); and PARA 572 post.

46 See ibid s 14(1); and PARA 572 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(3) EXERCISE OF MINISTERIAL POWERS/571. Orders.

571. Orders.

Orders made for civil protection purposes¹ are made by statutory instrument² and may not be made by a Minister of the Crown³ unless a draft has been laid before and approved by resolution of each House of Parliament⁴. Orders may make provision which applies generally or only in specified circumstances or for a specified purpose⁵, may make different provision for different circumstances or purposes⁶, and may make incidental, consequential or transitional provision⁷. Except when making an order which amends the definition of 'emergency' for these purposes⁸, a Minister of the Crown must consult the National Assembly for Wales⁹ before making an order relating wholly or partly to Wales and may not proceed to make such an order without the Assembly's consent¹⁰. Ministers are also required to consult the Scottish Ministers with respect to the making of orders affecting Scotland¹¹.

1 Ibid orders made under the Civil Contingencies Act 2004 Pt 1 (ss 1-18) (as amended). As to the power to make orders see ss 1(4), 5(1), 13(1); and PARAS 540, 542, 564 ante.

2 Ibid s 17(1).

3 As to Ministers of the Crown see PARA 541 ante.

4 Civil Contingencies Act 2004 s 17(2). Similar provision is made in respect of orders made by the Scottish Ministers: see s 17(3). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Ibid s 17(6)(a).

6 Ibid s 17(6)(b).

7 Ibid s 17(6)(c).

8 Ibid except when making an order under ibid s 1(4) (see PARA 540 ante).

9 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 See the Civil Contingencies Act 2004 s 16(1)(c), (g), (2), (3)(b), (f), (4); and PARA 572 post.

11 See s 14(1); and PARA 572 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/5. CIVIL PROTECTION/(3) EXERCISE OF MINISTERIAL POWERS/572. Consultation with National Assembly for Wales and Scottish Ministers.

572. Consultation with National Assembly for Wales and Scottish Ministers.

A Minister of the Crown¹ must consult the National Assembly for Wales² before:

- 219 (1) making regulations³ or issuing guidance⁴ relating wholly or partly to Wales about the extent of a duty⁵ to assess emergency⁶ risks, to plan for emergencies, to publish plans and assessments, or to warn, inform and advise the public about emergencies, and the manner in which such a duty is to be performed⁷;
- 220 (2) making regulations⁸ or issuing guidance⁹ relating wholly or partly to Wales about the duty¹⁰ to give advice and assistance to businesses and voluntary organisations¹¹ and the manner in which such a duty is to be performed¹²;
- 221 (3) making regulations¹³, issuing guidance¹⁴ or giving a direction¹⁵ relating wholly or partly to Wales requiring or permitting one general category 1 or category 2 responder¹⁶ to disclose information on request to another in connection with a function of either responder which relates to emergencies¹⁷;
- 222 (4) making an order¹⁸ or giving a direction¹⁹ relating wholly or partly to Wales requiring a general category 1 responder to perform a function for the purpose of preventing the occurrence of, or reducing, controlling or mitigating the effects of, or taking other action in connection with, an emergency²⁰;
- 223 (5) bringing proceedings²¹ in respect of a failure by a person or body where the failure relates wholly or partly to Wales²²; or
- 224 (6) making an order amending the list of general category 1 or category 2 responders²³ in respect of a person or body with, or in so far as the person or body has, functions in relation to Wales²⁴,

and may not without the Assembly's consent make any such regulations²⁵ or order²⁶, give any such directions²⁷, issue any such guidance²⁸ or bring any such proceedings²⁹ which relate wholly or partly to a county or county borough council in Wales³⁰ or to a fire and rescue authority³¹, an NHS trust³², a local health board³³, the Health Protection Agency³⁴, a port health authority³⁵, the Environment Agency³⁶ or a water or sewerage undertaker³⁷ if and in so far as that person or body has functions in relation to Wales³⁸.

A Minister of the Crown is also required to consult the Scottish Ministers before making regulations or an order in relation to a person or body if or in so far as the person or body exercises functions in relation to Scotland³⁹.

- 1 As to Ministers of the Crown see PARA 541 ante.
- 2 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 3 Ie under the Civil Contingencies Act 2004 s 2(3) (see PARA 570 ante).
- 4 Ie under ibid s 3(1) (see PARA 568 ante).
- 5 Ie the duty under ibid s 2(1) (see PARAS 545-548 ante).
- 6 For the meaning of 'emergency' see PARA 540 ante.
- 7 Civil Contingencies Act 2004 s 16(1)(a), (b).
- 8 Ie under ibid s 4(2) (see PARA 570 ante).
- 9 Ie under ibid s 4(6) (see PARA 568 ante).
- 10 Ie the duty under ibid s 4(1) (see PARA 549 ante).
- 11 For the meaning of 'voluntary organisation' see PARA 546 note 7 ante.
- 12 Civil Contingencies Act 2004 s 16(1)(a), (b).
- 13 Ie under ibid s 6(1) (see PARA 570 ante).
- 14 Ie under ibid s 6(4) (see PARA 568 ante).

- 15 Ie under ibid s 7(2) (see PARA 567 ante).
- 16 As to the category 1 responders see PARA 542 ante; and as to the category 2 responders see PARA 543 ante.
- 17 Civil Contingencies Act 2004 s 16(1)(a), (b), (d). As to the disclosure of information see PARAS 561-563 ante.
- 18 Ie under ibid s 5(1) (see PARA 564 ante).
- 19 Ie under ibid s 7(2) (see PARA 565 ante).
- 20 Ibid s 16(1)(c), (e).
- 21 Ie under ibid s 10 (see PARA 569 ante).
- 22 Ibid s 16(1)(f).
- 23 Ie under ibid s 13(1) (see PARA 542 text and notes 21-22 ante).
- 24 Ibid s 16(1)(g).
- 25 Ibid s 16(3)(a).
- 26 Ibid s 16(3)(b), (f).
- 27 Ibid s 16(3)(d).
- 28 Ibid s 16(3)(c).
- 29 Ibid s 16(3)(e).
- 30 Ibid s 16(2), (4)(a). County and county borough councils in Wales are general category 1 responders: see Sch 1 para 2; and PARA 542 ante. As to the counties and county boroughs in Wales and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.
- 31 As to fire and rescue authorities see the Fire and Rescue Services Act 2004 s 1; and FIRE SERVICES vol 18(2) (Reissue) PARA 17 et seq.
- 32 As to NHS trusts see HEALTH SERVICES vol 54 (2008) PARA 155 et seq.
- 33 As to local health boards see HEALTH SERVICES vol 54 (2008) PARA 74.
- 34 As to the Health Protection Agency see HEALTH SERVICES vol 54 (2008) PARA 213 et seq.
- 35 As to port health authorities see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 102.
- 36 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 37 As to water and sewerage undertakers see WATER AND WATERWAYS vol 100 (2009) PARA 134 et seq.
- 38 Civil Contingencies Act 2004 s 16(2), (4)(b).
- 39 Ibid s 14(1). A corresponding duty is conferred on the Scottish Ministers: see s 14(2). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(1) ALIEN ENEMIES/573. Occupation of territory.

6. ALIEN ENEMIES, TRADE AND PROPERTY

(1) ALIEN ENEMIES

573. Occupation of territory.

The temporary occupation of a friendly country by an enemy force does not automatically convert the territory into hostile territory, and a merchant residing in such a country does not necessarily become an alien enemy¹. It is only when the occupation amounts to subjugation, and the territory is held under the enemy's dominion and effective control for a period sufficient to give the occupation a settled and relatively permanent character, that the territory acquires the character of enemy territory². The subjugated territory may merely be part of a larger territory which, so far as unoccupied, retains its national character³. When a revolutionary war has taken place, the courts only recognise the existence or status of a new government after either de facto or de jure recognition by the Crown⁴.

When forces of the Crown are in occupation of foreign territory, the Crown has certain rights and obligations over that territory⁵.

1 *The Gerasimo* (1857) 11 Moo PCC 88, 2 BILC 544; and see also *De Jager v A-G of Natal* [1907] AC 326, 5 BILC 74, PC. The subject of occupation of enemy territory is dealt with in the Hague Regulations 1907 (Cd 4175) (see PARA 418 note 6 ante) arts 42-56, the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949, TS 39 (1958); Cmnd 550) ('the Geneva Convention (IV)') (see PARA 421 note 5 ante) arts 27-34, 47-78 and the Protocol, additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts done on 10 June 1977 (Geneva, 12 December 1977; Misc 19 (1977); Cmnd 6927) ('Protocol I') arts 3(b), 5(5), 14, 15(3), 34, 45(3), 46, 63, 66(3), 69, 85(4)(a). The Geneva Convention (IV) is set out in the Geneva Conventions Act 1957 s 7(1), Sch 4: see PARA 445 et seq ante. Protocol I is set out in the Geneva Conventions Act 1957 s 7(1), Sch 5 (as added): see PARA 422 et seq ante. The Geneva Convention (IV) and Protocol I supplement the Hague Regulations 1907, without abrogating them, and deal primarily with the treatment of persons in the occupied territory, whereas the Hague Regulations 1907 are primarily concerned with property there. As to the application and implementation of Protocol I see PARAS 421-422 ante.

2 *Sovfracht (V/O) v Van Udens Scheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] AC 203 at 211, [1943] 1 All ER 76 at 79, HL, per Viscount Simon LC, and at 220 and 84 per Lord Wright; *Re Anglo-International Bank Ltd* [1943] Ch 233, [1943] 2 All ER 88, CA.

3 *Sovfracht (V/O) v Van Udens Scheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] AC 203 at 229, [1943] 1 All ER 76 at 88, HL, per Lord Wright; *The Foltina* (1814) 1 Dods 450, 2 BILC 442; and see *SA Belge des Mines d'Aljustrel (Portugal) v Anglo Belgian Agency Ltd* [1915] 2 Ch 409, CA.

4 See *Bank of Ethiopia v National Bank of Egypt and Liguori* [1937] 1 Ch 513, [1937] 3 All ER 8; *Haile Selassie v Cable and Wireless Ltd (No 2)* [1939] Ch 182, [1938] 3 All ER 677, CA; *United States of America v McRae* (1869) LR 8 Eq 69, 2 BILC 259; *Spain v The Arantzazu Mendi* [1939] AC 256, [1939] 1 All ER 719, HL; and CIVIL PROCEDURE vol 11 (2009) PARA 785. Since 1980, the policy of Her Majesty's government has been to recognise states, not governments; and, where a new regime comes to power, whether it qualifies to be treated as a government will be left to be inferred from the nature of the dealings, if any, which Her Majesty's government has with the new regime and, in particular, on whether such dealings are on a normal government-to-government basis: 372 HC Official Report (6th series), 19 October 2001, written answers col 1383.

5 See eg as to the position of the former Control Commission for Germany, and the validity of its legislation, *Grahame v DPP* (1947) Control Commission Criminal Appeal Reports 168. See eg for the obligations of the United Kingdom as an occupying power in Iraq, UN Security Council Resolution 1483 (22 May 2005) PARA 5. The Human Rights Act 1998 applied to a British military prison operating in Iraq when Iraq was occupied by the armed forces of the Crown: *R (on the application of Al-Skeini) v Secretary of State for Defence* [2005] EWHC 2911 (Admin), [2005] 2 All ER 1401 (where the circumstances of one of six claimants came within the scope of the Act). As to the Crown's powers in relation to emergencies and in particular under martial law see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 820 et seq.

UPDATE

573 Occupation of territory

NOTE 5--*Al-Skeini*, cited, affirmed: [2007] UKHL 26, [2008] 1 AC 153.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(1) ALIEN ENEMIES/574. Meaning of 'alien enemy'.

574. Meaning of 'alien enemy'.

The primary meaning of 'alien enemy' is one whose sovereign or state is at war with the Sovereign of England¹.

However, in reference to civil rights, 'alien enemy' is used by the United Kingdom² courts in a different sense and means one who is voluntarily resident³ or who carries on business⁴ in an enemy or enemy-subjugated country⁵, even though he is British (whether natural-born⁶ or naturalised⁷), or the subject of a neutral state⁸. A subject of an enemy state who is neither residing nor carrying on business in an enemy or enemy-subjugated country is not an alien enemy with reference to civil rights, and so may maintain an action in this country⁹.

By residing and trading in an allied or neutral state, a subject of an enemy state may acquire a friendly or neutral commercial domicile¹⁰, which will protect his goods, if captured at sea, from condemnation¹¹. A British-born wife of an alien enemy separated from her husband and residing in a neutral or friendly country is not an alien enemy¹².

To prove that a person is an alien enemy at the time of the commencement of an action, it is not enough to show that he was some time before domiciled in territory which has become hostile¹³.

1 *Sylvester's Case* (1703) 7 Mod Rep 150. This has been described as the 'natural' meaning of alien enemy: *Porter v Freudenberg*, *Kreglinger v S Samuel and Rosenfeld*, *Re Merten's Patents* [1915] 1 KB 857 at 867, CA. As to aliens generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 13.

The term 'war', depending on its context, may include 'armed conflict': see eg the Civil Contingencies Act 2004 ss 18(1), 31(1); para 540 note 7 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. Cf, however, the common law position described in *Amin v Brown* [2005] EWHC 1670 (Ch). The monarch's enemies are foreign states in actual hostility against her: see *Case of the Marshall of the King's Bench* (1455) YB 33, Hen VI fo 1, pl 3. A change of nationality by decree of an enemy state purporting to change any of its subjects to a stateless person or a subject of a neutral state will not be recognised by the courts: *R v Home Secretary, ex p L* [1945] KB 7, DC. See also *Lowenthal v A-G* [1948] 1 All ER 295. An alien enemy does not lose his enemy character merely by taking the oath of allegiance to a neutral sovereign; to do so he must completely abandon his previous national character: *The Johann Christoph* (1854) 2 Ecc & Ad 2. Nor does he lose his enemy character merely by being a party to purely formal documents: *The Soglasie* (1854) 2 Ecc & Ad 101.

2 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

3 'Residence' for the purpose of the statutory definition of 'enemy' (see the Trading with the Enemy Act 1939 s 2(1)(b); and PARA 577 post), however, means de facto residence and is not restricted to voluntary residence: see *Vamvakas v Custodian of Enemy Property* [1952] 2 QB 183 at 195, [1952] 1 All ER 629 at 631-632.

4 *M'Connell v Hector* (1802) 3 Bos & P 113. The disability of a person who so carries on business may be cured by a licence from the Crown: *Ex p Baglehole* (1812) 18 Ves 525; *Sovfracht (V/O) v Van Udens Scheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] AC 203 at 218, [1943] 1 All ER 76 at 78, HL, per Viscount Simon LC.

5 *Porter v Freudenberg*, *Kreglinger v S Samuel and Rosenfeld*, *Re Merten's Patents* [1915] 1 KB 857 at 867-868, CA, per Lord Reading CJ; *Sovfracht (V/O) v Van Udens Scheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] AC 203 at 209, [1943] 1 All ER 76 at 78, HL, per Viscount Simon LC. In time of war a person is normally considered as belonging to the country where he is resident and carries on trade: *The Abo* (1854) 1 Ecc & Ad 347; *The Aina* (1854) 1 Ecc & Ad 313. See also *The Antwerpen* [1919] P 252n.

6 *Scotland v South African Territories Ltd* (1917) 33 TLR 255. In this case, although a British subject was interned and thereafter no longer voluntarily residing in an enemy country, his internment was the outcome of his choosing to remain in enemy territory. Cf *Roberts v Hardy* (1815) 3 M & S 533, where it was held that mere residence of a British subject in an enemy country at the outbreak of war, and his remaining there

subsequently, was insufficient to affect him with the disabilities attaching to an enemy, and it was said that he must be either trading in the enemy country or adhering to the enemy.

7 *R v Kupfer* [1915] 2 KB 321, CCA. As to British nationality and citizenship see generally BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

8 *The Baltica* (1857) 11 Moo PCC 141 (neutral residing in enemy country as consul and also trading there); *Porter v Freudenberg*, *Kreglinger v S Samuel and Rosenfeld*, *Re Merten's Patents* [1915] 1 KB 857 at 869, CA. See also *The Anglo-Mexican (Part Cargo ex)* [1918] AC 422, PC; *The Lutzow* [1918] AC 435, PC.

9 *Re Duchess of Sutherland*, *Bechoff David & Co v Bubna* (1915) 31 TLR 248.

10 As to commercial domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 469; PRIZE vol 36(2) (Reissue) PARA 832.

11 *The Flamenco*, *The Orduna* (1915) 32 TLR 53; *The Clan Grant (Part Cargo ex)* (1915) 31 TLR 321; *The Eumaeus* (1915) 85 LJP 130; *The Hypatia* [1917] P 36. See also PARA 575 note 4 post; and PRIZE vol 36(2) (Reissue) PARA 832.

12 *Re Grimthorpe's Settlement*, *Lord Islington v Countess Czernin*, *Re Grimthorpe's Settlement*, *Beckett v Countess Czernin* [1918] WN 16.

13 *Harman v Kingston* (1811) 3 Camp 150 at 152.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(1) ALIEN ENEMIES/575. Companies.

575. Companies.

A company incorporated in the United Kingdom¹ does not become an alien enemy merely because its shares are held by alien enemies; but it becomes an alien enemy if its agents or the persons in de facto control are alien enemies or if it carries on business in an enemy or enemy-subjugated country². The same applies to a company incorporated in an allied state³. A company incorporated in an enemy country is an alien enemy regardless of how its shares are held⁴.

1 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

2 *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307, HL; *Amorduct Manufacturing Co v Defries & Co* (1914) 84 LJB 586; *The Poona* (1915) 84 LJP 150; *Re Hilckes, ex p Muhesa Rubber Plantations Ltd* [1917] 1 KB 48, CA; *The Antwerpen* [1919] P 252n. See also COMPANIES vol 14 (2009) PARA 122.

3 *Central India Mining Co Ltd v Société Coloniale Anversoise* [1920] 1 KB 753, CA. However, a company which thus acquires an enemy character does not cease to be an English company subject to English law and, in particular, to the common law prohibition against trading with the enemy: *Kuenigl v Donnersmarck* [1955] 1 QB 515, [1955] 1 All ER 46.

4 *The Roumanian* [1915] P 26 (affd [1916] 1 AC 124, PC); *Sovfracht (V/O) v Van Udens Scheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] AC 203, [1943] 1 All ER 76, HL. However, enemy character may be avoided, in a case where the company carries on buying in an enemy-subjugated country, by transferring the commercial domicile to a country which is not an enemy country or enemy-subjugated: *Lubrafol (Owners) v SS Pamia (Owners)*, *The Pamia* [1943] 1 All ER 269. See also *Isaacs v Barclays Bank Ltd and Barclays Bank (France) Ltd* [1943] 2 All ER 682; and cf para 574 text and note 11 ante.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/576. Legislation prohibiting trading with the enemy.

(2) TRADING WITH THE ENEMY

576. Legislation prohibiting trading with the enemy.

The permanent legislation concerned with the offence of trading with the enemy¹ came into operation on 3 September 1939², with a protection from liability for previous acts not unlawful at common law³ and without prejudice to the exercise of any right or prerogative of the Crown⁴. The administration of the legislation is assigned to the Secretary of State⁵, save that discretion over consenting to assignments of choses or things in action and transfers of negotiable instruments is entrusted to the Treasury⁶. The legislation⁷ has been extended, subject to certain exceptions, adaptations and modifications, by Order in Council to the Isle of Man⁸ and the Channel Islands⁹, and may be so extended to any British overseas territory¹⁰ or to a foreign country or territory¹¹ in which the Crown has jurisdiction¹².

Amendments to the Trading with the Enemy Act 1939 and provisions relating to the custodianship of enemy property¹³, which were made temporarily during the 1939-45 war by defence regulations, have been permanently enacted¹⁴.

1 Ie the Trading with the Enemy Act 1939. For the meaning of 'enemy' see PARA 577 post. For the meaning of 'trading with the enemy' see PARA 579 post.

2 Order in Council as to the commencement of the Trading with the Enemy Act 1939, dated 8 September 1939, SR & O 1939/1195, made under the Trading with the Enemy Act 1939 s 17(2) (repealed).

3 Ibid s 17(2) proviso (repealed). Enactments relating to trading with the enemy which had been passed during the 1914-18 war were repealed by the Trading with the Enemy Act 1939 s 17(3), Schedule (repealed).

4 Ibid s 16. As to prerogative powers in wartime see PARAS 410-411 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 811. As to the royal prerogative generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

5 See ibid ss 2(2), 3, 5, 7 (ss 3, 5, 7 as amended). The administration was formerly carried out by the Board of Trade whose functions were transferred to the Secretary of State by the Secretary of State for Trade and Industry Order 1970, SI 1970/1537 (as amended). As to the Board of Trade generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505; TRADE AND INDUSTRY vol 97 (2010) PARA 802. As to the Secretary of State see PARA 413 note 14 ante. Expenses are defrayed by money provided by Parliament: Trading with the Enemy Act 1939 s 11(1). For a statement of the principles of administration of former trading with the enemy legislation see *Holt v AEG Electric Co Ltd* [1918] 1 Ch 320.

6 Trading with the Enemy Act 1939 s 4(1). See also PARAS 583-584 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 Ie the provisions of the Trading with the Enemy Act 1939 other than s 14 (as amended). Any document stating that any authority or sanction is given under any of the provisions of the Trading with the Enemy Act 1939 by a Secretary of State or the Treasury, and purporting to be signed on behalf of the Secretary of State or the Treasury, or by a person who is empowered by the Act to do anything which may be done thereunder by the Secretary of State, is evidence of the facts stated in the document: s 12.

8 See the Trading with the Enemy (Isle of Man) Order in Council 1940, SR & O 1940/88.

9 See the Trading with the Enemy (Channel Islands) Order in Council 1940, SR & O 1940/87.

10 See the Trading with the Enemy Act 1939 s 14(d); and the Mandated and Trust Territories Act 1947 s 1(1) (amended by the Statute Law (Repeals) Act 1969). 'British overseas territory' means a territory mentioned in the British Nationality Act 1981 s 50(1), Sch 6 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 44); British Overseas Territories Act 2002 s 1(1).

11 See eg the Trading with the Enemy (China Custodian) Order in Council 1944, SR & O 1944/100, providing for the administration of property held by the Custodian of Enemy Property for China.

12 Trading with the Enemy Act 1939 s 14 (amended by the Newfoundland (Consequential Provisions) Act 1950 s 1, Schedule; and the British Overseas Territories Act 2002 s 1(2)). Any power conferred by the Trading with the Enemy Act 1939 to make an Order in Council or an order includes a power to vary or revoke the Order in Council or order: s 15(5).

13 See PARAS 585-586 post.

14 See the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 (s 2 amended by the Statute Law (Repeals) Act 1976).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/577. Meaning of 'enemy'.

577. Meaning of 'enemy'.

'Enemy'¹ means: (1) any state, or sovereign of a state, at war with the Crown²; (2) any individual resident in enemy territory³; (3) any body of persons, corporate or unincorporate, carrying on business⁴ in any place, if and as long as the body is controlled by a person who is an enemy⁵; (4) any body of persons constituted or incorporated in, or under the laws of, a state at war with the Crown⁶; and (5) as respects any business carried on in enemy territory, any individual or body of persons, corporate or unincorporate, carrying on that business⁷. The Secretary of State⁸ may by order direct that any specified person is to be deemed⁹ to be an enemy¹⁰.

1 le for the purposes of the Trading with the Enemy Act 1939.

2 Ibid s 2(1)(a). 'A state at war with the Crown' refers to the traditional laws of war, and there is no warrant for extending the law relating to the disability of alien enemies to modern armed conflict not involving war in the technical sense: see *Amin v Brown* [2005] EWHC 1670 (Ch). See also note 7 infra.

3 Trading with the Enemy Act 1939 s 2(1)(b). See also note 7 infra. For the meaning of 'enemy territory' see PARA 578 post.

4 As to the meaning of 'carrying on business' see *Central India Mining Co Ltd v Société Coloniale Anversoise* [1920] 1 KB 753, CA.

5 Trading with the Enemy Act 1939 s 2(1)(c). See also note 7 infra.

6 Ibid s 2(1)(d). See also note 7 infra.

7 Ibid s 2(1)(e) (added by the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 3(a)). For these purposes, 'enemy' does not include any individual by reason only that he is an enemy subject: Trading with the Enemy Act 1939 s 2(1) (amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 3(b)). See also *Re Grimthorpe's Settlement, Beckett v Countess Czernin* [1918] WN 16, where an English wife was separated from her alien husband and was resident in a neutral territory but was held not to be an alien enemy under 1914-18 war legislation; and see PARA 578 note 4 post. 'Resident' means de facto resident, irrespective of whether the residence is voluntary: *Re Hatch, Public Trustee v Hatch* [1948] Ch 592, [1948] 2 All ER 288; *Vamvakas v Custodian of Enemy Property* [1952] 2 QB 183, [1952] 1 All ER 629. However, a prisoner of war in enemy territory is not an 'enemy': *Vandyke v Adams* [1942] Ch 155, [1942] 1 All ER 139. See also *SA Belge des Mines d'Aljustrel (Portugal) v Anglo-Belgian Agency Ltd* [1915] 2 Ch 409, CA (where, during the 1914-18 war, a company incorporated in Belgium was held not to be an enemy within the trading with the enemy legislation and proclamations then in force, even though a large portion of the country was effectively in military occupation of the enemy, since the country as a whole was not territory in hostile occupation); *Salti et Fils v Procurator-General* [1919] AC 968, PC (meaning of 'enemy' in the proclamations issued during the 1914-18 war); *Re Anglo-International Bank Ltd* [1943] Ch 233, [1943] 2 All ER 88, CA (communication with enemy shareholders prohibited); *Adrema Werke Maschinenbau GmbH v Custodian of Enemy Property and Administrator of German Enemy Property* [1957] RPC 49, CA (where it was held that goodwill is property, and can therefore be enemy property).

8 As to the Secretary of State see PARA 413 note 14 ante.

9 le for the purposes of the Trading with the Enemy Act 1939.

10 Ibid s 2(2). All such existing orders were revoked by the Trading with the Enemy (Specified Persons) (Revocation) Order 1946, SR & O 1946/1041.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/578. Meaning of 'enemy subject' and 'enemy territory'.

578. Meaning of 'enemy subject' and 'enemy territory'.

'Enemy subject' means¹ an individual who, not having British nationality², possesses the nationality of a state at war with the Crown³, or a body of persons constituted in or incorporated under the laws of any such state⁴. 'Enemy territory' means any area which is under the sovereignty of, or in the occupation of, a power with whom the Crown is at war, not being an area in the occupation of the Crown or an allied power⁵.

1 le for the purposes of the Trading with the Enemy Act 1939.

2 As to British nationality see the British Nationality Act 1981; and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

3 See the Trading with the Enemy Act 1939 s 15(1)(a).

4 See ibid 15(1)(b). In considering whether a person has been an enemy or an enemy subject, no account may be taken of any state of affairs before 3 September 1939: s 15(3). For the meaning of 'enemy' see PARA 577 ante.

5 Ibid s 15(1). A certificate of a Secretary of State as to the sovereignty or occupation in any area, and the relevant dates of that sovereignty or occupation, is conclusive evidence of the facts stated: s 15(2). The Secretary of State may by order direct that the provisions of the Trading with the Enemy Act 1939 are to apply in relation to a specified area as they apply in relation to enemy territory: s 15(1A) (added by the Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 8). On the revocation or variation of any such order the area must still be treated for certain purposes (cf para 583 note 2 post) as enemy territory until the Secretary of State otherwise specifies: see the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 9(1)-(3). As to the suspension of limitation periods where a party to an action is in enemy territory see LIMITATION PERIODS vol 68 (2008) PARA 1232 et seq. As to the Secretary of State see PARA 413 note 14 ante.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/579. Meaning of 'trading with the enemy'.

579. Meaning of 'trading with the enemy'.

A person is deemed to have traded with the enemy¹ if he has any commercial, financial or other intercourse or dealings with or for the benefit² of an enemy³, and in particular if he has supplied any goods to or for the benefit of an enemy, or obtained any goods⁴ from an enemy, or traded in, or carried, any goods consigned to or from an enemy or destined for or coming from enemy territory⁵, or has paid or transmitted any money, negotiable instrument or security for money to or for the benefit of an enemy or to a place in enemy territory⁶, or has performed any obligation to, or discharged any obligation⁷ of, an enemy⁸, or if he has done certain⁹ other things¹⁰.

A person is not deemed to have traded with the enemy by reason only that he has done something under an authority given generally or specially by, or by any person authorised in that behalf by, the Secretary of State or the Treasury¹¹, or has received payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the payee had already been performed when the payment was received and had been performed at the time when the payer was not an enemy¹².

1 For the meaning of 'enemy' see PARA 577 ante. As to the offence of trading with the enemy and penalties see PARA 580 post. The term 'enemy', in connection with penalties for trading with the enemy under the Trading with the Enemy Act 1939 s 1, includes a person acting on behalf of an enemy: s 1(3).

2 'For the benefit' are words of the widest possible character: see *Stockholms Enskilda Bank Aktiebolag v Schering Ltd* [1941] 1 KB 424, [1941] 1 All ER 257, CA, where payment by a surety releasing an enemy from liability was held to be illegal; *Re Anglo-International Bank Ltd* [1943] Ch 233, [1943] 2 All ER 88, CA, where communications with enemy shareholders were prohibited.

3 Trading with the Enemy Act 1939 s 1(2)(a).

4 See *R v Oppenheimer and Colbeck* [1915] 2 KB 755, CCA (meaning of obtaining goods, wares or merchandise for purpose of 1914-18 war proclamation).

5 Trading with the Enemy Act 1939 s 1(2)(a)(i).

6 Ibid s 1(2)(a)(ii).

7 'Discharged any obligation' means a complete discharge, and not a mere transfer of the obligation: *R and A Kohnstamm Ltd v Ludwig Krumm (London) Ltd* [1940] 2 KB 359, [1940] 3 All ER 84. See also *Stockholms Enskilda Bank Aktiebolag v Schering Ltd* [1941] 1 KB 424 at 440, [1941] 1 All ER 257 at 267, CA, per Sir Wilfrid Greene MR.

8 Trading with the Enemy Act 1939 s 1(2)(a)(iii).

9 He has done anything which under the provisions of the Trading with the Enemy Act 1939 subsequent to s 1(2) is to be treated as trading with the enemy: s 1(2)(b). For such provisions see s 3A(7) (as added), s 4(3), s 6(1); and PARA 582 et seq post.

10 Ibid s 1(2)(b). References in the Trading with the Enemy Act 1939 to an attempt to trade with the enemy are to be construed accordingly: s 1(2) (amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 2(1)).

11 See the Trading with the Enemy Act 1939 s 1(2) proviso (i). As to the transfer of functions to the Secretary of State see PARA 413 note 14 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

12 Ibid s 1(2) proviso (ii) (amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 2(2)). See also *R and A Kohnstamm Ltd v Ludwig Krumm (London) Ltd* [1940] 2 KB 359, [1940] 3 All ER 84.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/580. Offences, penalties and proceedings.

580. Offences, penalties and proceedings.

It is an offence to trade or attempt to trade with the enemy¹. On conviction on indictment² or on summary conviction³ a person is liable to a penalty; and the court may order forfeiture of the goods⁴ or money in respect of which the offence has been committed⁵. Proceedings⁶ may be taken before the appropriate court in the United Kingdom⁷ having jurisdiction in the place where the offender is for the time being⁸. Any person who, for the purpose of obtaining any authority or sanction⁹ under the Trading with the Enemy Act 1939, or in giving any information

for the purposes of the Act or any order under it, knowingly¹⁰ or recklessly¹¹ makes a statement which is false in a material particular is liable to a penalty¹².

Where an offence¹³ committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a director¹⁴, manager, secretary or other officer of the body corporate, he as well as the body corporate is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly¹⁵.

1 Trading with the Enemy Act 1939 s 1(1) (amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 2(1)). For the meaning of 'enemy' see PARA 577 ante; and for the meaning of 'trading with the enemy' see PARA 579 ante.

2 Trading with the Enemy Act 1939 s 1(1)(a). The penalty on conviction on indictment is imprisonment for a term not exceeding seven years or a fine or both: see s 1(1)(a).

3 Ibid s 1(1)(b) (amended by the Magistrates' Courts Act 1980 s 32(2)). The penalty on summary conviction is imprisonment for a term not exceeding 12 months or a fine of an amount not exceeding the prescribed sum or both: see the Trading with the Enemy Act 1939 s 1(1)(b) (as so amended). As to the prescribed sum see PARA 475 note 9 ante. This provision has been extended to Guernsey: see the Criminal Justice (Guernsey) Order 1992, SI 1992/3202.

4 As to the forfeiture of prohibited goods and penalties for untrue declarations as to ultimate destination see the Import, Export and Customs Powers (Defence) Act 1939 ss 3, 8; and TRADE AND INDUSTRY vol 97 (2010) PARA 810 et seq.

5 Trading with the Enemy Act 1939 s 1(1).

6 A prosecution may not be instituted except by or with the consent of the Director of Public Prosecutions: ibid s 1(4) (amended by the Criminal Jurisdiction Act 1975 s 14(5), Sch 6 Pt I). Consent will in certain circumstances be presumed: *R v Metz* (1915) 84 LJB 1462, CCA (decided in relation to the similar provisions of the Trading with the Enemy Act 1914 s 1(4) (repealed)). The fact that a document has been dispatched addressed to a person in enemy territory is, unless the contrary is proved, evidence, as against any person who was a party to the dispatch of the document, that the person to whom the document was dispatched was an enemy: Trading with the Enemy Act 1939 s 1(3A) (added by the Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 2(4)).

7 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

8 Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 2(3).

9 As to the authorities and sanctions see PARAS 579 ante, 583 post.

10 As to the construction of the word 'knowingly' see *R v McVitie* [1960] 2 QB 483, [1960] 2 All ER 498, CCA (omission of the word 'knowingly' from particulars of offence charged).

11 A statement is reckless when it is made without caring whether it is true or false: *Derry v Peek* (1889) 14 App Cas 337, HL. As to the tests to be applied in determining whether a statement is reckless cf *R v Bates* [1952] 2 All ER 842 (on appeal sub nom *R v Russell* [1953] 1 WLR 77, CCA); *R v MacKinnon* [1959] 1 QB 150, [1958] 3 All ER 657; *R v Grunwald* [1963] 1 QB 935, [1960] 3 All ER 380, CCA.

12 Trading with the Enemy Act 1939 s 9(1) (s 9 amended by the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). The penalty on summary conviction is imprisonment for a term not exceeding six months or a fine not exceeding level 3 on the standard scale or both: see the Trading with the Enemy Act 1939 s 9(1) (as so amended). A person who wilfully obstructs another in the exercise of powers conferred on him by or under the Trading with the Enemy Act 1939 is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 9(2) (as so amended). As to the standard scale see PARA 432 note 21 ante.

13 Is an offence under the Trading with the Enemy Act 1939.

14 For the purposes of the Trading with the Enemy Act 1939, a person is deemed to be a director if he occupies the position of a director, by whatever name called (s 15(4)); and for the purposes of s 10, a person is deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of that body act (s 15(4)), although a person is not, by reason only that the directors act on his advice given in a professional capacity, to be taken to be such a person (s 15(4) proviso).

15 Ibid s 10.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/581. Inspection and supervision of businesses.

581. Inspection and supervision of businesses.

If the Secretary of State¹ thinks it expedient for securing compliance with the provisions² prohibiting trading with the enemy³, he may by written order authorise an inspector to inspect books and documents belonging to or under the control of a named person, and to require him and any other person to give information as to the business carried on⁴ by the named person, and to enter any premises used for that business⁵. On the inspector's report, the Secretary of State, if it appears expedient for the above purpose to ensure that the business should be subject to supervision, may appoint a supervisor of the business with such powers as the Secretary of State may determine⁶. A person who, without reasonable cause, fails to produce for inspection or to furnish to an inspector or a supervisor any document or information duly requested is liable on summary conviction to a penalty⁷.

1 As to the Secretary of State see PARA 413 note 14 ante.

2 Ie the provisions of the Trading With the Enemy Act 1939 s 1: see PARA 580 ante.

3 For the meaning of 'enemy' see PARA 577 ante.

4 As to the meaning of 'carrying on business' see PARA 577 note 4 ante.

5 Trading with the Enemy Act 1939 s 3(1).

6 Ibid s 3(2).

7 Ibid s 3(3) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). The penalty is a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding six months or both: see the Trading with the Enemy Act 1939 s 3(3) (as so amended). A person, who, with intent to evade the provisions of s 3 (as amended), destroys, mutilates or defaces any book or other document which an inspector or supervisor is or may be authorised to inspect is liable, on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both (s 3(4)(a)), or, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the prescribed sum or both (s 3(4)(b) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2))). As to the standard scale see PARA 432 note 21 ante. As to the prescribed sum see PARA 475 note 9 ante.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/582. Power to control and wind up businesses.

582. Power to control and wind up businesses.

Where a business is being carried on in the United Kingdom¹ by or on behalf of, or under the direction of, persons all or any of whom are enemies² or enemy subjects or appear to the Secretary of State³ to be associated with enemies, the Secretary of State may make a restriction order, being an order prohibiting the carrying on of the business either absolutely or except for such purposes and subject to such conditions as may be specified in the order, or make a winding-up order⁴. Contravention of an order is an offence of trading with the enemy⁵. By the order or by a subsequent order, the Secretary of State may appoint a controller⁶ to

supervise the carrying out of the order, and, in the case of a winding-up order, to conduct the winding up, with the powers of a liquidator in a voluntary winding up⁷, and such other powers⁸ as may be necessary or convenient to give full effect to the order⁹.

Distribution of the assets¹⁰ of the business while an order is in force is subject to the rules as to preferential payments which apply in the winding up of a company¹¹, and as regards unsecured debts¹² non-enemy creditors are to be given priority¹³; any balance after the discharge of all liabilities is to be distributed among persons interested in the business in such manner as the Secretary of State may direct¹⁴. An order is a bar to the presentation of a bankruptcy petition or petition for sequestration or summary sequestration against individuals or the presentation of a winding-up petition¹⁵ or passing of a resolution for winding up in the case of a company, and to the taking of steps for enforcement of the rights of creditors, without the consent of the Secretary of State, but the Secretary of State may present a petition for winding up by the court and the order constitutes a ground on which a company may be so wound up¹⁶.

1 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

2 For the meaning of 'enemy' see PARA 577 ante.

3 As to the Secretary of State see PARA 413 note 14 ante.

4 Trading with the Enemy Act 1939 s 3A(1) (s 3A added by the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 4). The making of a restriction order does not prejudice the making of a winding-up order at a subsequent date: Trading with the Enemy Act 1939 s 3A(1) (as so added).

5 Ibid s 3A(7) (as added: see note 4 supra). As to the effect of an area ceasing to be enemy territory see PARA 583 note 2 post.

6 The remuneration of the controller and the expenses incurred in carrying out the order to an amount certified by the Secretary of State are to be defrayed out of the business: ibid s 3A(9) (as added: see note 4 supra). The Secretary of State, on an application by a controller and after considering objections by interested persons, may by order grant him a release, and the order (which is subject to revocation on proof of fraud or concealment of any material fact) discharges him from all liability in respect of any act or default as controller: s 3A(6) (as so added).

7 This includes power in the name of the person carrying on the business or in the controller's name, and by deed or otherwise, to convey or transfer any property, and power to apply to the court to determine any question arising in the carrying out of the order: ibid s 3A(2) (as added: see note 4 supra). As to the powers of a liquidator in a voluntary winding up see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 950 et seq.

8 See *Re Th Goldschmidt Ltd* [1917] 2 Ch 194; *Continho Caro & Co v Vermont & Co* [1917] 2 KB 587; *Re Fr Meyers Sohn Ltd* [1918] 1 Ch 169, CA.

9 Trading with the Enemy Act 1939 s 3A(2) (as added: see note 4 supra). The winding up is under the sole jurisdiction of the Secretary of State except so far as he may refer questions to the court (see note 7 supra), and the controller is his agent: *Re Banca Commerciale Italiana* [1943] 1 All ER 480.

10 Where any business for which a controller has been appointed has assets in enemy territory, the controller must first, if practicable, cause an estimate to be prepared of:

22 (1) the value of those assets;

23 (2) the amount of any liabilities of the business to creditors, whether secured or unsecured, who are enemies;

24 (3) the amount of the claims of persons who are enemies to participate, otherwise than as creditors of the business, in any distribution of assets of the business made while an order is in force,

and where such an estimate is made, those liabilities and claims are deemed to have been satisfied out of the assets of the business in enemy territory, or to have been satisfied so far as those assets will go, and only the balance (if any) ranks for satisfaction out of the other assets of the business: Trading with the Enemy Act 1939 s 3A(4) (as added: see note 4 supra).

Where an estimate has been prepared, a certificate of the controller as to the value or amount of any assets, claims or liabilities to which the estimate relates is conclusive for the purpose of determining the amount of the assets of the business available for discharging the other liabilities of the business and for distribution amongst other persons claiming to be interested in the business: s 3A(5) (as so added). However, this does not affect the rights of creditors of, and other persons interested in, the business against the assets of the business in enemy territory: s 3A(5) proviso (as so added). As to the meaning of 'assets' see *Re Vulcaan Coal Co, Harrison v Harbottle* [1922] 2 Ch 60; *Dresdner Bank v Russo-Asiatic Bank* [1923] 1 Ch 209.

11 As to winding up generally see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 432 et seq.

12 For the meanings of 'debts' and 'creditors', and as to the relevant date for determining the enemy character of a creditor, see *Re Banca Commerciale Italiana* [1942] Ch 406 at 412, 413, [1942] 2 All ER 208 at 211.

13 See the Trading with the Enemy Act 1939 s 3A(3) (as added: see note 4 supra). These provisions, however, in their application to the distribution of money which would in accordance with them fall to be paid to an enemy have effect subject to the provisions of s 7 (see PARA 585 post), and any order made under s 7: s 3A(3) proviso (as so added).

14 Ibid s 3A(3) (as added: see note 4 supra). See further *Re British Incandescent Mantle Works Ltd* (1923) 129 LT 126 (sale of business by controller).

15 See *Re Dieckmann* [1918] 1 Ch 331 (distinction between winding up and bankruptcy); *Re Cedes Electric Traction Ltd* [1918] 1 Ch 18.

16 See Trading with the Enemy Act 1939 s 3A(8) (as added: see note 4 supra).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/583. Transfer of choses or things in action and negotiable instruments.

583. Transfer of choses or things in action and negotiable instruments.

Except with Treasury sanction¹, no assignment of a chose or thing in action made by or on behalf of an enemy² is effective so as to confer on any person any rights or remedies in respect of the chose or thing in action³. This applies also in relation to any transfer of any coupon or other security transferable by delivery, not being a negotiable instrument⁴. Except with Treasury sanction, neither a transfer of a negotiable instrument by or on behalf of an enemy, nor any subsequent transfer of it, is effective so as to confer any rights or remedies against any party to the instrument⁵.

Any person who, by payment or otherwise, purports to discharge any liability from which he is accordingly relieved⁶, knowing the facts by which he is so relieved, is deemed to have thereby traded with the enemy⁷. It is, however, a defence for the defendant to prove that at the time when he purported to discharge the liability he had reasonable grounds for believing that the liability was enforceable against him by order of a competent court, not being either a court having jurisdiction in the United Kingdom⁸ or a court having jurisdiction in enemy territory, and would be enforced against him by such an order⁹.

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 A vesting order by the court in respect of patents vested in an enemy as bare trustee for a person having British nationality is not an assignment in this context: *Re IG Farbenindustrie Akt's Agreement* [1941] Ch 147, [1940] 4 All ER 486; revsd on other grounds [1944] Ch 41, [1943] 2 All ER 525, CA. See also *Novello & Co Ltd v Hinrichsen Edition Ltd* [1951] Ch 595, [1951] 1 All ER 779 (affd on appeal on another point [1951] Ch 1026, [1951] 2 All ER 457, CA); and CHOSSES IN ACTION vol 13 (2009) PARA 92.

Where any area ceases to be enemy territory (see PARA 578 ante), it must, for the purposes of the Trading with the Enemy Act 1939 s 3A (as added) (see PARA 582 ante), s 4 (see the text and notes 3-9 infra), s 5 (see PARA

584 post) and s 7 (see PARA 585 post), be treated as if there had been no such cessation, until such time as the Secretary of State may by order specify: Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 9(1), (2). The area must be likewise treated for the purposes of any order made under the Trading with the Enemy Act 1939 s 7, save as expressly provided by any such order: Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 9(1). For the meaning of 'enemy' see PARA 577 ante. As to the Secretary of State see PARA 413 note 14 ante.

3 Trading with the Enemy Act 1939 s 4(1). Section 4 does not apply to securities to which s 5 (see PARA 584 post) applies: s 4(5). As to dealings in enemy-owned patents, designs, copyright and trade marks see PARA 587 post.

4 Ibid s 4(2).

5 Ibid s 4(1).

6 Ie relieved by ibid s 4.

7 Ibid s 4(3). For the meaning of 'trading with the enemy' see PARA 579 ante. As to penalties see PARA 580 ante.

8 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

9 Trading with the Enemy Act 1939 s 4(3) proviso (amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 5). A person who has reasonable cause to believe that if he satisfied a claim in respect of a negotiable instrument or chose or thing in action he would be committing an offence of trading with the enemy may, as a good discharge, pay the sum due into the High Court, to be dealt with according to an order of the court: Trading with the Enemy Act 1939 s 4(4).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/584. Transfer and allotment of securities; purchase of enemy currency.

584. Transfer and allotment of securities; purchase of enemy currency.

If any securities¹ are transferred by or on behalf of an enemy², or if any securities issued by a company³ are allotted or transferred to or for the benefit of an enemy subject⁴ without the consent of the Secretary of State⁵, then, except with the sanction of the Secretary of State, the transferee or allottee does not by virtue of the transfer or allotment acquire any rights or remedies in respect of the securities⁶. A body corporate issuing or managing the securities must not take cognisance of or otherwise act upon such a transfer except under the authority of the Secretary of State⁷. No share warrants, stock certificates or bonds, being warrants, certificates or bonds payable to bearer⁸, may be issued in respect of securities registered or inscribed in the name of an enemy or a person acting on his behalf or for his benefit⁹. A person contravening these provisions is liable to a penalty¹⁰.

The purchase of enemy currency¹¹ is to be treated as trading with the enemy¹².

1 'Securities' means annuities, stock, shares, bonds, debentures or debenture stock registered or inscribed in any register, branch register or other book kept in the United Kingdom: Trading with the Enemy Act 1939 s 5(4). For the meaning of 'United Kingdom' see PARA 402 note 4 ante. As to payments of money to, and vesting of property in, the custodian of enemy property see PARAS 585-586 post.

2 For the meaning of 'enemy' see PARA 577 ante. As to the effect of territory ceasing to be enemy territory see PARA 583 note 2 ante; and as to enemy territory see PARA 578 ante.

3 Ie a company within the meaning of the Companies Act 1985 (see COMPANIES vol 14 (2009) PARAS 1, 24), or any corresponding enactment in force in Northern Ireland: Trading with the Enemy Act 1939 s 5(1)(b); Interpretation Act 1978 s 17(2)(a).

4 For the meaning of 'enemy subject' see PARA 578 ante.

- 5 As to the Secretary of State see PARA 413 note 14 ante.
- 6 Trading with the Enemy Act 1939 s 5(1).
- 7 Ibid s 5(1).
- 8 Share warrants etc payable to bearer are negotiable instruments: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1610 et seq.
- 9 Trading with the Enemy Act 1939 s 5(2).
- 10 The penalty on summary conviction for a contravention of ibid s 5 (as amended) is imprisonment for a term not exceeding six months or a fine not exceeding level 3 on the standard scale or both: s 5(3) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). As to the standard scale see PARA 432 note 21 ante.
- 11 'Enemy currency' means any notes or coins circulating as currency in any area under the sovereignty of a power with whom the Crown is at war, not being an area occupied by the Crown or an allied power, or any other notes or coins declared by Treasury order to be enemy currency: Trading with the Enemy Act 1939 s 6(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.
- 12 Ibid s 6(1).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/585. Custodianship of enemy property.

585. Custodianship of enemy property.

With a view to preventing the payment of money to enemies and of preserving enemy property¹ in contemplation of arrangements to be made at the conclusion of peace², the Secretary of State³ may appoint custodians⁴ of enemy property for England, Scotland and Northern Ireland respectively, and by order⁵: (1) require payment of money⁶ to be made to the prescribed⁷ custodian⁸; (2) vest⁹ property¹⁰ and the right of transfer¹¹ in the prescribed custodian¹²; (3) confer and impose on the custodians and on any other person such rights, powers, duties and liabilities¹³ as may be prescribed as respects enemy property¹⁴ or money¹⁵; (4) require the payment of fees¹⁶; (5) require the furnishing of returns and accounts and other information and the production of documents¹⁷; and (6) make incidental and supplementary provisions¹⁸.

A person who pays a debt or deals with property contrary to the order¹⁹ which applies to it is liable to a penalty, and the payment or dealing is void²⁰.

1 'Enemy property' means property belonging to or held or managed on behalf of an enemy or an enemy subject: Trading with the Enemy Act 1939 s 7(8)(a). For the meanings of 'enemy' and 'enemy subject' see PARAS 577-578 ante. 'Property' means real or personal property, and includes any estate or interest in real or personal property, any negotiable instrument, debt or other chose or thing in action and any other right or interest whether in possession or not: s 7(8)(b). Certain rights of action in tort may not be property: *Maerkle v British and Continental Fur Co Ltd* [1954] 3 All ER 50 at 53, [1954] 1 WLR 1242 at 1247, CA. Goodwill is property: *Adrema Werke Maschinenbau GmbH v Custodian of Enemy Property and Administrator of German Enemy Property* [1957] RPC 49, CA. As to the operation of the Trading with the Enemy Act 1939 s 7 on a territory ceasing to be enemy territory see PARA 583 note 2 ante.

2 The effect of these words was considered in *RJ Reuter Co Ltd v Ferd Mulhens* [1954] Ch 50, [1953] 2 All ER 1160, CA.

3 As to the Secretary of State see PARA 413 note 14 ante.

4 A custodian is a Crown servant of a most unusual kind: see *Bank Voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584 at 609, [1954] 1 All ER 969 at 978, HL, per Lord Morton, and at 618 and 983 per Lord Reid. As to the immunity from income tax in respect of income received by the custodian from property vested in him see *Bank Voor Handel en Scheepvaart NV v Administrator of Hungarian Property* supra at 609 and 978 per Lord Morton, and at 618 and 983 per Lord Reid.

5 Trading with the Enemy Act 1939 s 7(1). Such an order has effect notwithstanding anything in any Act passed before the Trading with the Enemy Act 1939 (ie 5 September 1939): s 7(4).

6 The money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy, or which would, but for the provisions of *ibid* s 4 or s 5 (see PARAS 583-584 ante), be payable to any other person: s 7(1)(a). As to the requirement see PARA 586 post.

7 'Prescribed' means prescribed by an order under *ibid* s 7: s 7(8)(c).

8 *Ibid* s 7(1)(a).

9 The order may vest the property or provide for and regulate its vesting: *ibid* s 7(1)(b). The effect of vesting is to restrict the rights of the former owner to participation in any distribution under arrangements made on the conclusion of peace: *Maerkle v British and Continental Fur Co Ltd* [1954] 3 All ER 50, [1954] 1 WLR 1242, CA. Numerous vesting orders have been made, including: the Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198 (amended by SR & O 1940/94; SR & O 1940/734; SR & O 1940/883; SR & O 1941/765; SR & O 1942/342; SR & O 1944/914; SR & O 1945/1414; and modified by SR & O 1940/1113; SR & O 1945/850; SR & O 1945/1359; SR & O 1945/1573; SR & O 1946/817; SR & O 1946/1044; SR & O 1946/1061, SR & O 1946/1387); the Trading with the Enemy (Insolvency) Order 1940, SR & O 1940/1419 (amended by SI 1986/2001); the Trading with the Enemy (Foreign Currency Accounts) Order 1944, SR & O 1944/915; the Trading with the Enemy (Custodian) Order 1945, SR & O 1945/43 (amended by SI 1948/1047); the Trading with the Enemy (Custodian) (No 2) Order 1945, SR & O 1945/887; the Trading with the Enemy (Custodian) Order 1946, SR & O 1946/1039 (amended by SI 1948/1047); the Trading with the Enemy (Custodian) (Specified Persons) Order 1946, SR & O 1946/1040; the Trading with the Enemy (Custodian) (No 2) Order 1946, SR & O 1946/2141 (amended by SI 1948/1047); the Trading with the Enemy (Custodian) Order 1949, SI 1949/1083; the Trading with the Enemy (Custodian) Order 1950, SI 1950/494; the Trading with the Enemy (Custodian) Order 1951, SI 1951/153 (amended by SI 1991/2684); the Trading with the Enemy (Custodian) (No 2) Order 1951, SI 1951/779; the Trading with the Enemy (Custodian) (No 3) Order 1951, SI 1951/780; the Trading with the Enemy (Custodian) (No 4) Order 1951, SI 1951/1625; and the Trading with the Enemy (Custodian) (No 5) Order 1951, SI 1951/1626. As to the vesting of claims in bankruptcy see PARA 586 post.

10 The such enemy property as may be prescribed: Trading with the Enemy Act 1939 s 7(1)(b).

11 The right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the order to be, vested in the custodian: *ibid* s 7(1)(c). The Secretary of State has power to direct a custodian to sell securities to a person who is not the highest bidder or to any specified person without seeking other offers: see the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 6(6). In exercising a power to transfer or sell securities, a custodian is not bound by any restriction as to transfer or condition as to price or purchasers in the articles of association, byelaws or other rules of the body corporate: see Sch 2 para 6(7). See also *Re Parana Plantations Ltd* [1948] 1 All ER 742; *Nordisk Insulinlaboratorium v CL Bencard (1934) Ltd* [1953] Ch 430, [1953] 1 All ER 986, CA.

12 Trading with the Enemy Act 1939 s 7(1)(b), (c). See also PARA 586 post. Where a custodian dies or for any other reason ceases to hold office, the Secretary of State may by order vest in his successor any property or right vested in the former custodian: Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 6(2).

13 These include, where it appears to the Secretary of State to be expedient that any business should be carried on or continue to be carried on in or from the United Kingdom, such rights, powers, duties and liabilities as respects the enemy property or money (see the text and notes 14-15 *infra*) as are necessary or expedient to enable the business to be carried on: *ibid* Sch 2 para 6(1). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

14 The property which has been or is required to be vested in the custodian by or under the order, property of which the right of transfer has been or is required to be so vested, and any other enemy property: see the Trading with the Enemy Act 1939 s 7(1)(d)(i)-(iii).

15 *Ibid* s 7(1)(d)(iv). 'Money' in this context means money which has been or is required to be paid to the custodian: s 7(1)(d)(iv).

16 *Ibid* s 7(1)(e). A custodian may be empowered by the order to remit or reduce fees: Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 6(5). All fees received must be paid into the Exchequer: Trading with the Enemy Act 1939 s 7(7). See also PARA 586 post.

17 Ibid s 7(1)(f).

18 Ibid s 7(1). It seems that s 7 (as amended) does not enable the custodian to be given power to consent where consent to an advancement is required by a settlement: *Re Forster's Settlement, Forster v Custodian of Enemy Property for England* [1942] Ch 199 at 206, 207, [1942] 1 All ER 180 at 187. Grant of administration has been made to the Public Trustee on behalf of the custodian in respect of the estates of enemy nationals: see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 18, 177. As to the Public Trustee see TRUSTS vol 48 (2007 Reissue) PARA 766 et seq. Where a requirement or direction with respect to money or property is addressed to a person by the custodian with his certificate that the money or property is within the order, the certificate is evidence of the facts stated, and the person is not liable in an action or other legal proceeding by reason only of compliance with the requirement or direction: Trading with the Enemy Act 1939 s 7(2). Payments, the vesting of property or the right to transfer property and directions in pursuance of an order under s 7 (as amended) are not invalidated by reason only that at the material time the person interested in the property had died or ceased to be, or although believed to be was in fact not, an enemy or enemy subject: see s 7(3).

19 Ie the order under ibid s 7 (as amended).

20 Ibid s 7(5) (amended by the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). The penalty on summary conviction is imprisonment for a term not exceeding six months or a fine not exceeding level 3 on the standard scale or both: see the Trading with the Enemy Act 1939 s 7(5) (as so amended). A person who, without reasonable cause, fails to produce or furnish any document or information required under an order is liable on summary conviction to a continuing daily penalty: see s 7(6). As to the standard scale see PARA 432 note 21 ante.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(2) TRADING WITH THE ENEMY/586. Powers and duties of custodians and other persons.

586. Powers and duties of custodians and other persons.

Money¹ payable to or for the benefit of an enemy², or deemed to be so payable, must be paid³ to the custodian⁴ who is empowered to sue for it⁵. The Secretary of State⁶ may make vesting orders vesting enemy property⁷ and rights of transfer in the custodian, and prescribing his powers⁸. Debts and claims provable by an enemy in bankruptcy or on a winding up are vested in the custodian, who may prove, agree and compromise accounts and appeal, and take other necessary proceedings⁹.

Subject to directions of the Secretary of State¹⁰, the custodian must hold¹¹ the money and property or right of transfer vested in him until the termination of the war¹². Such money and property is free from liability to attachment or execution¹³. The receipt of the custodian is a good discharge to a payer¹⁴. The custodian may invest money in Treasury bills or other government securities as the Secretary of State may from time to time specify¹⁵. He is authorised to charge fees calculated on the amount of the money or value of the property vested in him, but they may be remitted or reduced¹⁶.

1 This includes in particular any money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy, by way of:

- 25 (1) dividends, bonus or interest, in respect of any shares, stock, debentures, debenture stock, bonds or other securities, issued by any company or government, or any municipal or other authority (Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 1(ii)(a));
- 26 (2) payment of any securities which have become payable on maturity or by being drawn for payment or otherwise (art 1(ii)(b));
- 27 (3) interest or other payment in respect of any loan or deposit whether secured or unsecured (art 1(ii)(c));

- 28 (4) profits or share of profits in any business, syndicate or other mercantile enterprise or adventure (art 1(ii)(d));
- 29 (5) debt, including money in the possession of any bankers, whether on deposit or current account or whether held in trust or in custody for or for the benefit of an enemy (see note 2 *infra*) (art 1(ii)(e));
- 30 (6) money due under or in respect of any policy of assurance (art 1(ii)(f));
- 31 (7) rent or other payment reserved out of or payable in respect of freehold or leasehold property or any interest in land or any manor (art 1(ii)(g));
- 32 (8) payment in respect of any requisitioned property (art 1(ii)(h));
- 33 (9) payment arising under any trust, will or settlement (art 1(ii)(i)).

Any money which would but for the Trading with the Enemy Act 1939 s 4 or s 5 (see PARAS 583-584 *ante*) be payable to any purported assignee, transferee or allottee, is to be paid to the custodian (see note 4 *infra*): Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 1(iii).

2 For the meaning of 'enemy' see, by virtue of *ibid* art 9(ii), PARA 577 *ante*.

3 Payment must normally be within 14 days after the person concerned becomes an enemy or the money becomes payable, and must be made in English currency: see *ibid* art 1(iv) (amended by SR & O 1940/94).

4 Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 1(i). The Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198 (as amended) contains provisions as to the powers and duties of custodians and of other persons. References to 'the custodian' are to be construed as references to such custodian of enemy property for any part of the United Kingdom as is prescribed by the Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198: art 9(ii). For the meaning of 'United Kingdom' see PARA 402 note 4 *ante*.

5 *Ibid* art 1(vii), (viii) (added by SR & O 1941/765). The custodian is entitled to notice of payments due and to particulars of accounts and production of documents: Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 1(vi) (added by SR & O 1941/765). Income directed to be held on protective trusts has been held payable to the custodian: see *Re Wittke, Reynolds and Gorst v King Edward's Hospital Fund for London and Custodian of Enemy Property* [1944] Ch 166, [1944] 1 All ER 383. Cf *Re Gourju's Will Trusts, Starling v Custodian of Enemy Property* [1943] Ch 24, [1942] 2 All ER 605. See also *Re Pozot's Settlement Trusts, Westminster Bank Ltd v Guerbois* [1952] Ch 427, [1952] 1 All ER 1107, CA, overruling *Fraenkel v Whitty* [1948] Ch 55, [1947] 2 All ER 646. The beneficial interest in property held by the custodian is in statutory suspense: *Bank Voor Handel en Scheepvaart NV v Slatford* [1953] 1 QB 248 at 288, [1952] 2 All ER 956 at 967, CA, per Evershed MR; sub nom *Bank Voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584 at 608, [1954] 1 All ER 969 at 977, HL, per Lord Morton.

6 As to the Secretary of State see PARA 413 note 14 *ante*.

7 For the meaning of 'enemy property' see PARA 585 note 1 *ante* (definition applied by the Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 9(ii)).

8 *Ibid* art 2(i)-(iii). As to patents see art 2(iv); and see PARA 587 note 3 *post*. Applications for vesting orders must be made to the Secretary of State: *Re De Barbe, Ellissen v Griffith* [1941] WN 218. As regards specified persons, rights to transfer securities (see the Trading with the Enemy (Custodian) Order 1946, SR & O 1946/1039 (amended by SI 1948/1047)) and debts (see the Trading with the Enemy (Custodian) (Specified Persons) Order 1946, SR & O 1946/1040) were vested in the custodian.

9 Trading with the Enemy (Insolvency) Order 1940, SR & O 1940/1419, arts 1, 2. The custodian must be notified by the debtor, liquidator or trustee, as the case may be: see arts 3, 4. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 526.

10 Under a direction of the Secretary of State, the custodian may pay over any particular money or transfer any particular property to or for the benefit of the person who would but for the Trading with the Enemy Act 1939, or any order made under it, be entitled to it: Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 3(ii).

11 A custodian must, however, if the Treasury so directs, pay or transfer to persons specified in the direction: (1) any money paid to him as being money which, but for the existence of a state of war, would have been payable to a person resident or carrying on business in enemy territory not under the sovereignty of a power with whom the Crown is at war or in any area in relation to which the Trading with the Enemy Act 1939 applies as it applies in relation to enemy territory; and (2) any property or transfer right vested in him as being

property belonging to any such person: see the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 6(3)(a), (b). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Where the right to transfer any securities registered or inscribed in a register, branch register or other book kept in the United Kingdom has been vested in a custodian of enemy property on the grounds that the securities belonged to, or were held or managed on behalf of: (a) an individual resident in any enemy territory which is not under the sovereignty of a power with whom the Crown is at war, or in any area in relation to which the Trading with the Enemy Act 1939 applies as it applies in relation to enemy territory; (b) an individual or body of persons (whether corporate or unincorporate) carrying on business in any such territory or area; or (c) any such body of persons carrying on business in any place and controlled by any such individual or body of persons as is mentioned in head (a) or head (b) supra, and the right to transfer the securities has been exercised so as to vest the securities in the custodian or any person acting under his directions, the Secretary of State may by order direct that this provision applies to the securities: Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 2 para 7(1). The Secretary of State must then give notice of the making of such an order to the company or other body in whose book the securities in question are registered or inscribed, and thereupon the securities vest in the person who would have been entitled to them but for the vesting in the custodian of the right to transfer the securities: Sch 2 para 7(2)(a). The company or other body must cause the securities to be registered or inscribed in the name of the person in whose name they were registered or inscribed immediately before the exercise by the custodian of his right to transfer the securities: Sch 2 para 7(2)(b). Notwithstanding anything in Sch 2 para 7(2)(b), where the person mentioned therein is not the same as the person in whom the securities are vested, and before the securities have been registered or inscribed (ie in pursuance of Sch 2 para 7(2)(b)) the person in whom they are vested has submitted to the company or body proof to its satisfaction of his title, the company or body may cause the securities to be registered or inscribed in his name: Sch 2 para 7(2)(c). The vesting, registration or inscription of any securities must be without prejudice to any lien or charge to which they were subject immediately before the time at which the order in question was revoked, and does not affect anything done before that time: Sch 2 para 7(3). For these purposes, 'securities' means annuities, stock, shares, bonds, debentures or debenture stock: Sch 2 para 7(4).

Further, a custodian may be required to pay or transfer money and property to the person acting as custodian of enemy property in any of Her Majesty's dominions or in any territory of an allied power or power at war with any power with which the Crown is at war: see Sch 2 para 6(4).

12 Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 3(i). As to the effect on the operation of orders made under the Trading with the Enemy Act 1939 s 7 (as amended) of a territory ceasing to be enemy territory see PARA 583 note 2 ante.

13 Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 3(iii).

14 Ibid art 3(iv). No person may, without the consent of the Secretary of State, deal with enemy property, save as directed by art 4: art 4. Persons holding or managing enemy property, enemy subjects, companies and partners must, within a certain time, furnish the custodian with certain information: see art 5. Where the custodian sells shares, stock or securities of a company, the company may, with the consent of the Secretary of State, purchase and reissue them: art 6(i). This transfer must be registered in the name of the custodian or that of the transferee, but subject to any lien of the company or other body, or to any other lien or charge of which the custodian has notice: art 6(ii). As to the particular custodian to receive payment, and transfers between custodians see art 8.

15 Trading with the Enemy Investment Order 1940, SR & O 1940/1113, art 1. Any income received by a custodian of enemy property appointed under the Trading with the Enemy Act 1939 s 7 (as amended) from the investment of moneys coming into his hands in his capacity as custodian, being income received by way of discount on the purchase by him of Treasury bills or by way of interest on other loans made by him to the Treasury or on moneys placed by him in his name on deposit or current account at a bank, belongs to the Crown and must be paid into the Exchequer: Enemy Property Act 1953 s 4(1) (amended by the Statute Law (Repeals) Act 1976). This is deemed to have had effect as from the coming into operation of the Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, so that it is not construed as authorising or requiring the repayment of any sums paid by a custodian before 29 October 1953 otherwise than into the Exchequer: Enemy Property Act 1953 s 4(2).

16 See the Trading with the Enemy (Custodian) Order 1939, SR & O 1939/1198, art 7 (amended by SR & O 1940/734; SR & O 1942/342). As to fees generally see PARA 585 note 16 ante.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(3) ENEMY INDUSTRIAL PROPERTY/587. Enemy-owned industrial property.

(3) ENEMY INDUSTRIAL PROPERTY

587. Enemy-owned industrial property.

The Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939¹, which was passed shortly after the outbreak of the 1939-45 war to enable certain dealings in enemy-owned patents², registered designs, copyright and trade marks to be carried out without being rendered illegal by the law against trading with the enemy, is permanent legislation, although only operative when there are persons who fulfil the description of enemy or enemy subject³.

A licence granted in favour of a United Kingdom⁴ resident or a person resident in the Isle of Man in respect of a patent, registered design⁵, copyright or design right⁶, and any contract relating to such a licence, is not invalid under the law against trading with the enemy⁷ by reason only that the proprietor or owner or any person otherwise interested in the patent, design, copyright or design right, or any party to the contract, is an enemy⁸. The comptroller⁹ is empowered on application¹⁰ by order¹¹ to revoke any such licence, to revoke or vary any conditions subject to which the licence has effect, or to revoke or vary any of the provisions of a contract relating to the licence in so far as they relate to the licence¹². The comptroller may grant licences under enemy-owned patents, designs, copyrights and design rights¹³ and may suspend the trade mark rights of an enemy or enemy subject¹⁴.

A patent may be granted to¹⁵, or a design¹⁶ or trade mark¹⁷ may be registered on the application of, an enemy alone or jointly with another person¹⁸. An Order in Council declaring a country to be a convention country¹⁹ remains in force notwithstanding the outbreak of war with that country²⁰, and an Order in Council extending copyright protection to foreign works remains in force in the same circumstances unless revoked²¹. The comptroller has a discretion to refuse to take, or to suspend the taking of, any proceedings on or in relation to any application by an enemy for a patent or for the registration of a design or trade mark²². He also has discretion to extend the time limits in view of war circumstances²³.

1 As to the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 see PATENTS AND REGISTERED DESIGNS; and see also COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 32-33; TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 108. The Secretary of State is empowered to make rules for regulating the practice under the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 (see s 9(1)), and, with Treasury consent, to prescribe fees for applications and other matters (see s 9(2)). The Patents, Designs, Copyright and Trade Marks (Emergency) Rules 1939, SR & O 1939/1375 (amended by SR & O 1940/693) made under this power are now spent. As to the Secretary of State see 413 note 14 ante; and see PARA 576 note 5 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 'Patent' has the same meaning as in the Patents Act 1977 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 303); Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 10(1) (amended by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 3(1), (5)).

3 As to patents legislation generally see PATENTS AND REGISTERED DESIGNS. In the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939, 'enemy' and 'enemy subject' are defined by s 10(1) as having the same meaning as in the Trading with the Enemy Act 1939: see ss 2, 15(1); and PARAS 577-578 ante. For the purposes of the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939, entries in the registers kept at the Patent Office relating to residence and nationality are prima facie evidence of a person's residence or nationality: s 7(1) (amended by the Trade Marks Act 1994 s 106(1), Sch 4 para 3(3)(c)). As to the register of patents see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARAS 585-591.

4 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

5 For these purposes, 'design' has the same meaning in reference to a registered design as in the Registered Designs Act 1949 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 734 et seq); Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 10(1) (amended by the Copyright, Designs and Patents Act 1988 Sch 7 para 3(1), (5)).

6 For these purposes, 'design' has the same meaning in reference to design right as in the Copyright, Designs and Patents Act 1988 Pt III (ss 213-264) (see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 505): Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 10(1) (as amended: see note 5 supra).

7 Ie the Trading with the Enemy Act 1939 s 1 (as amended) (see PARA 579 ante), or any rule of law relating to intercourse or dealings with or for the benefit of enemies.

8 Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 1(1) (amended by the Copyright, Designs and Patents Act 1988 Sch 7 para 3(2), (3)). However, the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 1 (as amended) does not render valid a grant or assignment of any such licence or any contract relating to any such licence if that grant, assignment or contract was made during a state of war and was unlawful under the law against trading with the enemy: s 1(1) proviso (a). Nor does s 1 (as amended) authorise the performance of a contract in a manner inconsistent with the law against trading with the enemy or with any enactment relating to the property, rights or capacity of enemies: s 1(1) proviso (b). See also COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 32; PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 391.

9 'The comptroller' means the Comptroller-General of Patents, Designs and Trade Marks, and, in relation to trade marks, means the Comptroller-General in his capacity as the registrar within the meaning of the Trade Marks Act 1994 (see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 17): Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 10(1) (amended by the Trade Marks Act 1994 Sch 4 para 3(1), (3)(d)).

10 Ie on application by the licensee or any other person interested.

11 Before deciding as to the making of an order under the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939, the comptroller must, unless it is inexpedient or impossible to do so, give to any person appearing to be interested an opportunity of being heard: s 8. No order is to be held invalid because a decision made for the purposes of the order that a particular person is an enemy or an enemy subject is wrong: s 7(2).

12 See *ibid* s 1(2) (amended by the Copyright, Designs and Patents Act 1988 Sch 7 para 3(2), (3)). An order for a variation may be revoked or varied by a subsequent order: Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 1(2) (as so amended).

13 See *ibid* s 2 (amended by the Copyright, Designs and Patents Act 1988 Sch 7 para 3(1), (3); and the Statute Law (Repeals) Act 1995); and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 32; PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARAS 401, 727.

14 See the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 3 (substituted by the Trade Marks Act 1994 Sch 4 para 3(1), (2)).

15 Ie under the Patents Act 1977 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 307 et seq).

16 Ie a design registered under the Registered Designs Act 1949 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq).

17 Ie a trade mark registered under the Trade Marks Act 1994 (see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 19 et seq).

18 See the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 4(1) (amended by the Trade Marks Act 1994 Sch 4 para 3(3)), (4), (5)).

19 Ie an order under the Copyright, Designs and Patents Act 1988 s 159 (see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 447).

20 As to the effect of war on licences by agreement see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 391.

21 See the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 5(1) (s 5 amended by the Copyright, Designs and Patents Act 1988 Sch 7 para 3(1), (4)); and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 33. Copyright or design right subsisting by virtue of such an Order in Council continues to subsist even though the owner becomes an enemy: see the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 5(2) (as so amended); and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 33.

22 See *ibid* s 4(3); and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 592.

23 The comptroller has discretion to extend the time limited by or under the Patents and Designs Act 1907, the Trade Marks Act 1994 or the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 for doing any act, where he is satisfied: (1) that the act was not done within the time limit by reason that a person was on active service or by reason of any other circumstances arising from the existence of a state of war which, in the opinion of the comptroller, justify an extension of the time limit (Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 6(1)(a) (amended by the Patents and Designs Act 1946 s 6(2) (continued in force by the Statute Law (Repeals) Act 1986 Sch 2 para 3); and by the Trade Marks Act 1994 Sch 4 para 3(1), (3)(b)); or (2) that, by reason of circumstances arising from the existence of a state of war, the doing of the act within the time limit would have been or would be injurious to the rights or interests of the person by or on whose behalf the act is or was to be done or to the public interest (Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 s 6(1)(b)). Such an extension of the time for doing any act may be for any period that the comptroller thinks fit, notwithstanding that power is conferred to extend the time for doing that act for a specified period only: s 6(2)(a). The extension may also be granted notwithstanding that that time expired before any application or request for extension was made, or that, by reason of that act not having been done within that time, the relevant application, patent, registration or proceeding has ceased or expired, or become void or invalid or been treated as abandoned: s 6(2)(c). These powers may be exercised notwithstanding that their exercise benefits an enemy or an enemy subject, whether directly or indirectly: s 6(3).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(3) ENEMY INDUSTRIAL PROPERTY/588. Use of technical information by Crown contractors.

588. Use of technical information by Crown contractors.

For the purposes of any contract or order for the production¹ of defence materials², any person authorised by a competent authority³ may make use of technical information⁴ of certain kinds⁵ and supply articles produced with the aid of such information discharged from any restrictions⁶ imposed by, or obligation to make payments under, agreements with third persons whenever made⁷.

An authorisation for these purposes⁸ must be in writing, and must specify the defence materials to which it relates and the restrictions and obligations relieved by it⁹.

These provisions¹⁰ do not affect any restriction or obligation imposed by an agreement to which a government department is party¹¹, and neither they nor any authorisation under them authorise the disclosure to a competent authority or any other person of any technical information to which they apply in contravention of any agreement¹².

1 'Production' includes repair, maintenance, testing and development: Defence Contracts Act 1958 s 6(1). The Defence Contracts Act 1958 was passed on 7 July 1958 and came into force at the expiration of the period of one month beginning with that date: s 8(1), (3). It extends to the Isle of Man and to Northern Ireland: s 8(4).

2 'Defence materials' means: (1) articles required for the armed forces of the Crown or for such supply to foreign governments or to the United Nations as is authorised by certain enactments, being articles designed or adapted for the use of armed forces or components of such articles; and (2) articles required by the Secretary of State for Defence for the production of any such articles: *ibid* s 6(1) (definition amended by the Ministry of Aviation (Dissolution) Order 1971, SI 1971/719, art 3(2), Schedule para 4(2); and the Civil Contingencies Act 2004 s 32, Sch 2 Pt 1 para 5, Sch 3). As to the Secretary of State for Defence see ARMED FORCES vol 2(2) (Reissue) PARA 2; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

3 'Competent authority' means a Secretary of State: Defence Contracts Act 1958 s 6(1) (amended by the Ministry of Aviation (Dissolution) Order 1971, Schedule para 4(2)). As to the Secretary of State see PARA 413 note 14 ante.

4 The use of technical information includes the production and reproduction of drawings, models, plans or documents: Defence Contracts Act 1958 s 2(7).

5 Ie any specification or design for articles and any process or technique used in the production of articles (not being in any case a patented invention or registered design), and any drawing, model, plan, document or other information relating to the application or operation of any such specification, design, process or

technique: *ibid* s 2(7). 'Article' includes any substance or material, and any plant, machinery or apparatus, whether affixed to land or not: s 6(1).

6 The Defence Contracts Act 1958 applies in relation to restrictions subsisting by reason of the existence of copyright in any work as it applies in relation to restrictions imposed by agreement: s 6(2). 'Agreement' includes a licence, assignment or assignation: s 6(1).

7 See *ibid* s 2(1). Where, by an authorisation, any person is discharged from the obligation to make payments in respect of the use of any technical information or the supply of any articles, so much of any agreement as provides for the making by any other person of payments in respect of the use of the information or the supply of articles of that description is of no effect in relation to any use or supply in respect of which the first person is so discharged: s 2(4).

8 *Ie* for the purposes of *ibid* s 2(1): see s 2(2).

9 See *ibid* s 2(2). So much of an agreement as restricts the disclosure of the terms of that or any other agreement is ineffective in relation to the disclosure to the competent authority of information required by that authority to identify the restrictions and obligations relieved by it: s 2(2). An authorisation may be retrospective: s 2(3).

10 *Ie* *ibid* s 2.

11 *Ibid* s 2(5).

12 *Ibid* s 2(6).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(3) ENEMY INDUSTRIAL PROPERTY/589. Authorisation procedure and compensation.

589. Authorisation procedure and compensation.

Except where disclosure of the production¹ or supply of the defence materials² in question would be prejudicial to the safety of the state³, a competent authority must, before giving an authorisation in respect of any restriction or obligation to any person, serve on him written notice requesting him to treat with the party entitled to enforce the restriction or obligation for the waiver or the modification of such restriction or obligation, and must allow time⁴ for an agreement⁵ embodying such waiver or modification to be concluded⁶; and, where an authorisation is given, the competent authority must give notice of it to all persons affected or who, on making such inquiries as are reasonably practicable in the circumstances, appear to be affected by the authorisation⁷.

Provision is made for the compensation out of public funds⁸ of persons prejudicially affected by an authorisation, the amount of the compensation being determined by agreement made between those persons and the competent authority with Treasury approval or in default of agreement determined by the court⁹, which is to have regard to specified factors and other relevant circumstances¹⁰. The court has a general jurisdiction¹¹ to determine any disputes¹² arising out of the power to grant authorisations¹³.

1 As to the meaning of 'production' see PARA 588 note 1 ante.

2 For the meaning of 'defence materials' see PARA 588 note 2 ante.

3 See the Defence Contracts Act 1958 s 3(3). In any such case, the competent authority is not required to give notice of the authorisation (see s 3(2); and the text and note 7 *infra*) unless and until it is satisfied that the disclosure would no longer be prejudicial; and unless and until the competent authority otherwise directs, the person to whom the authorisation is given is discharged from any obligation to which he would otherwise be subject by virtue of any agreement to give information to any other person in respect of the use of the

information or the supply of articles to which the authorisation relates: s 3(3). For the meaning of 'competent authority' see PARA 588 note 3 ante.

4 The time is such period, not being less than three months from the date of service of the notice, as may be specified in the notice, unless the person on whom the notice is served notifies the competent authority in writing that no agreement is likely to be concluded within that period: *ibid* s 3(1).

5 As to the meaning of 'agreement' see PARA 588 note 6 ante.

6 Defence Contracts Act 1958 s 3(1).

7 *Ibid* s 3(2).

8 See *ibid* s 5.

9 'The court', as respects England and Wales, means the High Court or any patents county court having jurisdiction by virtue of an order under the Copyright, Designs and Patents Act 1988 s 287 (see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 588); see the Defence Contracts Act 1958 s 4(4) (amended by the Patents Act 1977 s 132(6), Sch 5 para 4); and the Patents Act 1977 s 130(1) (amended by the Copyright, Designs and Patents Act 1988 ss 295, 303(1), Sch 5 para 5, Sch 7 para 23). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

10 Defence Contracts Act 1958 s 4(1). Regard must be had to the following: (1) the extent of the use made in pursuance of the authorisation (s 4(1)(a)); (2) the value of any services performed by that person in connection with the conception, development, improvement or adaptation of any specification, design, process or technique used in pursuance of the authorisation (s 4(1)(b)); (3) any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any government department in respect of the technical information so used (s 4(1)(c)); and (4) any other relevant circumstances (s 4(1)(d)).

11 Either party to the dispute may refer it to the court in such manner as may be prescribed by rules of court: see *ibid* s 4(2).

12 In any dispute between a competent authority and any other person as to the exercise of powers conferred by *ibid* s 2 (see PARA 588 ante), or as to the making or amount of a payment under s 4.

13 See *ibid* s 4(2). The court is empowered to exclude the public from proceedings and to prohibit the publication of technical information disclosed in proceedings to the extent that it appears to the court to be necessary or expedient in the public interest or in the interests of any parties to the proceedings: see s 4(3).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(3) ENEMY INDUSTRIAL PROPERTY/590. Powers of supply.

590. Powers of supply.

The Secretary of State¹ has various powers including the power to buy, sell and manufacture any articles² required by government departments for the discharge of their functions and also articles which are, in his opinion, essential to the needs of the community in the event of war³.

1 As to the Secretary of State see PARA 413 note 14 ante.

2 'Articles' includes substances: Supply Powers Act 1975 s 7. However, see also the definition of 'articles required for the public service' (see s 7; and TRADE AND INDUSTRY vol 97 (2010) PARA 806).

3 See generally *ibid* ss 1-5; and TRADE AND INDUSTRY vol 97 (2010) PARA 805 et seq. As to local arrangements for civil protection see the Civil Contingencies Act 2004 Pt 1 (ss 1-18) (as amended); and PARA 539 et seq ante. As to the power to make emergency regulations see Pt 2 (ss 19-31); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(4) DISTRIBUTION OF ENEMY PROPERTY/591. Collection, realisation and distribution of German enemy property.

(4) DISTRIBUTION OF ENEMY PROPERTY

591. Collection, realisation and distribution of German enemy property.

In the absence of a peace treaty with Germany¹, the collection and realisation of German enemy property² and the distribution of the proceeds to persons who establish claims in respect of German enemy debts³ are provided for by Order in Council⁴.

By Order in Council⁵ an administrator⁶ was appointed⁷, to whom German enemy property was to be transferred⁸. Also by Order in Council the manner of making claims⁹ was prescribed, certain claims were excluded¹⁰, the fees chargeable to persons making claims in respect of German enemy property were prescribed¹¹ and provision was made for the establishment of priorities¹², the determination and payment of claims¹³ and the distribution of proceeds of the realisation of the property¹⁴.

1 See PARA 409 ante.

2 'German enemy property' means property which, on 23 October 1950 (see the Distribution of German Enemy Property Act 1949 s 1; and the Distribution of German Enemy Property (No 1) Order 1950, SI 1950/1642, art 11), is, or at any time thereafter becomes, subject to control under the Trading with the Enemy Act 1939 s 7 (as amended) (see PARA 585 ante), being property, or the proceeds or income of property, which on or at any time after 3 September 1939, belonged to or was held or managed on behalf of: (1) the German state; (2) any individual who, on or after 3 September 1939, was a German national resident in Germany or in any territory under the sovereignty of a state which on or at any time after 3 September 1939 was at war with the Crown; (3) any individual who was a German national on or after 3 September 1939 and: (a) was included among the persons specified in any order made under the Trading with the Enemy Act 1939 s 2(2) (see PARA 577 ante); or (b) was a person whose property became subject to control under s 7 at a time when he was not an enemy; (4) any body of persons (whether corporate or unincorporate) which on or at any time after 3 September 1939 was a body incorporated or constituted in, or under the laws of, Germany; and (5) any body of persons (whether corporate or unincorporate) which on or at any time after 3 September 1939 was controlled by an individual or body mentioned in head (2), (3) or (4) supra: Distribution of German Enemy Property Act 1949 s 8(1).

'Property' means real or personal property, and includes any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose or thing in action, and any other right or interest whether in possession or not: s 8(1). Property which, or the right to transfer which, is vested in any custodian of enemy property (see the Trading with the Enemy Act 1939 s 7 (as amended); and PARA 585 ante), and property which cannot be dealt with without the consent of the Secretary of State, is deemed to be subject to control under s 7 (as amended): Distribution of German Enemy Property Act 1949 s 8(3), (4). For what is included in property rights and interests belonging to Hungarian nationals under the Treaty of Peace (Hungary) Order 1948, SI 1948/116 see *Bank Voor Handel en Scheepvaart v Slatford* [1953] 1 QB 248, [1952] 2 All ER 956, CA (revsd on another point [1954] AC 584, [1954] 1 All ER 969, HL).

'German national' does not include any person who acquired German nationality by reason of the inclusion in the German state after 1 March 1938 of any territory not comprised therein on that day: Distribution of German Enemy Property Act 1949 s 8(1). A person who at any time was resident in Germany is deemed to have been a German national at that time unless it is proved to the satisfaction of the administrator, within such time and in such manner as may be prescribed by Order in Council, that he was not a German national at that time: s 8(2). For these purposes, 'Germany' means territory comprised in the German state on 1 March 1938: s 8(1).

3 'German enemy debt' means any sum due at 16 December 1949 (ie the passing of the Distribution of German Enemy Property Act 1949) in respect of an obligation incurred before 3 September 1939, which on that day was an obligation of any of the following persons:

34 (1) the German state;

35 (2) any individual who on that day was a German national resident in Germany;

36 (3) any body of persons (whether corporate or unincorporate) which on that day was a body incorporated or constituted in or under the laws of Germany,

and which was an obligation to any of the following persons:

- 37 (a) the government in the United Kingdom;
- 38 (b) any British subject or British protected person resident or carrying on business on that day in the United Kingdom;
- 39 (c) any body of persons (whether corporate or unincorporate) which on that day was a body incorporated or constituted under the laws in force in the United Kingdom,

except that where any person or body of persons specified in heads (b) and (c) supra carried on business on 3 September 1939 both in and outside the United Kingdom, any sum attributable to the business carried on outside the United Kingdom must be excluded: s 8(1). References in the Distribution of German Enemy Property Act 1949 to the United Kingdom, except where the reference is to the government in the United Kingdom, include references to the Isle of Man and the Channel Islands: s 11(2). For the meaning of 'United Kingdom' generally see PARA 402 note 4 ante. Note that the term 'British subject' is now used for a very limited class of persons (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 9, 66 et seq). As to British protected persons see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 10. As to British citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

'German enemy debt' also means any sum, not included in the definition supra, being: (i) a sum due at 16 December 1949, in respect of any bond of the German External Loan 1924, or the German Government International 5.5% Loan 1930, being a bond enforced in accordance with the Supplementary Agreement for the execution of the Anglo-German Transfer Agreement, 1 July 1938, art 2; (ii) a sum due on 7 May 1945, in respect of any bond of the Austrian Government International Loan 1930, or the Austrian Government Credit Anstalt Bonds 1936; (iii) a sum due on 7 May 1945 in respect of any bond of the Austrian Government International Guaranteed Loan 1933-53, or the Austrian Government Guaranteed Conversion Loan 1934-59, which was in the beneficial ownership of a British holder (within the meaning of the Anglo-German Transfer Agreement art 4) on 1 July 1938; or (iv) a sum due at 16 December 1949 in respect of any bond of the Konversionskasse 4% Sterling Bonds: Distribution of German Enemy Property Act 1949 s 8(1). These sums also include any sum due at 16 December 1949 in respect of any bond of the City of Saarbruecken 6% Sterling Loan of 1928, being a bond enforced in accordance with the Supplementary Agreement for the execution of the Anglo-German Transfer Agreement art 2; and any sum due in respect of the following: the Potash Syndicate of Germany 25 year Sinking Fund Gold Loan; City of Berlin 6% Sterling Loan, 1927; City of Cologne 6% Sterling Loan, 1928; City of Dresden 5.5% Sterling Loan, 1927; City of Munich 6% Sterling Bonds; State of Hamburg 6% Sterling Loan of 1926; Hamburg Waterworks 6% Sterling Loan; The Free State of Saxony 6% 25 year Sterling Bonds of 1927; Province of Westphalia 7% Sterling Loan of 1926; Prussian Electric Company 6% 25 year Sterling Bonds: Distribution of German Enemy Property Act 1952 s 1, Schedule.

A claim for unliquidated damages is not a debt: *Re Collbran* [1956] Ch 250, [1956] 1 All ER 310.

4 Distribution of German Enemy Property Act 1949 s 1(1). The Orders in Council made under this power are the Distribution of German Enemy Property (No 1) Order 1950, SI 1950/1642; and the Distribution of German Enemy Property (No 2) Order 1951, SI 1951/1899 (amended by SI 1952/633; SI 1961/2030). The power to make Orders in Council or orders under the Distribution of German Enemy Property Act 1949 includes the power to revoke or vary the same: s 5(1). All Orders in Council so made are subject to annulment by a resolution of either House of Parliament: s 5(2).

5 See the Distribution of German Enemy Property (No 1) Order 1950, SI 1950/1642, art 3.

6 The administrator is a corporation sole under the name of the Administrator of German Enemy Property (Distribution of German Enemy Property Act 1949 s 1(3); Distribution of German Enemy Property (No 1) Order 1950, SI 1950/1642, art 3) and may sue and be sued in that name (art 5).

7 le by the Board of Trade. The expenses of the Board of Trade (now the Secretary of State for Trade and Industry) under the Distribution of German Enemy Property Act 1949 are defrayed out of moneys provided by Parliament: s 7(1). As to the Board of Trade generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505; TRADE AND INDUSTRY vol 97 (2010) PARA 802.

8 See the Distribution of German Enemy Property Act 1949 s 1(2)(a), (b). See also *Maerkle v British and Continental Fur Co Ltd* [1954] 3 All ER 50, [1954] 1 WLR 1242, CA; *Adrema Werke Maschinenbau GmbH v Custodian of Enemy Property and German Enemy Property Administrator* [1957] RPC 49, CA; *RJ Reuter Co Ltd v Ferd Mulhens* [1954] Ch 50, [1953] 2 All ER 1160, CA; *Fischler v Roumanian Property Administrator* [1960] 3 All ER 433, [1960] 1 WLR 917, HL (revival of ownership of, or beneficial title to, money controlled by debts clearing office after treaty of peace). The Distribution of German Enemy Property (No 1) Order 1950, SI 1950/1642, art 12 enabled the administrator to require a custodian to transfer to him any German enemy property in his control or in which he had the right of transfer. Money representing German enemy property in any colony, protectorate or trust territory placed at the disposal of the Crown was to be paid to the administrator and dealt with as other German enemy property: Distribution of German Enemy Property Act 1949 s 4(1). After the 1914-

18 war the peace treaties were followed by the Treaty of Peace Act 1919, under which the Treaty of Peace Order 1919, SR & O 1919/1517 (lapsed), and various amending orders were made, and by the Treaties of Peace (Austria and Bulgaria) Act 1920, the Treaty of Peace (Hungary) Act 1921 and the Treaty of Peace (Turkey) Act 1924, under all of which further orders were made. For cases dealing with the effects of the treaties, Acts and orders, and particularly with what property was subject to charge under the Acts and the orders made under them see *The Marie Gartz* [1920] P 172; *Clearing Office Controller v Edwards & Co (Bread Street) Ltd* [1923] WN 245; *Re Levinstein, Levinstein v Levinstein* [1921] 2 Ch 251; *Re Biedermann, Best v Wertheim* [1922] 2 Ch 771, CA; *Favorke v Steinkopff* [1922] 1 Ch 174; *Re Neuburger's Settlement, Foreshow v Public Trustee* [1923] 1 Ch 508; *Luxardo v Public Trustee* [1924] 2 Ch 147, CA; *Hartmann v Konig* (1933) 50 TLR 114, HL; *New York Life Insurance Co v Public Trustee* [1924] 2 Ch 101, CA; *Fried v German Property Administrator* [1925] Ch 757; *Sutherland v German Property Administrator* [1934] 1 KB 423, CA; *Meyer & Co v Faber* [1921] 2 Ch 226; *Re Nierhaus* [1921] 1 Ch 269. See also *Clearing Office Controller v Weir & Co* (1925) 95 LJB 88, CA (affd (1926) 135 LT 705, HL) (effect of joint decisions of clearing offices); *Groebel v Hungarian Property Administrator* (1925) 70 Sol Jo 345 (whether Attorney General a necessary party to an action against an administrator); *German Property Administrator v Knoop* [1933] Ch 439 (whether German government is trustee or agent for German nationals); *Holland v German Property Administrator* [1937] 2 All ER 807, CA (liability of trustees for payment of income to a German national).

9 See the Distribution of German Enemy Property Act 1949 s 1(2)(c), (5); and the Distribution of German Enemy Property (No 2) Order 1951, SI 1951/1899, art 4 (amended by SI 1952/633).

10 See the Distribution of German Enemy Property Act 1949 s 1(4)(a); and the Distribution of German Enemy Property (No 2) Order 1951, SI 1951/1899, art 3 (amended by SI 1952/633).

11 See the Distribution of German Enemy Property Act 1949 s 1(2)(f); and the Distribution of German Enemy Property (No 2) Order 1951, SI 1951/1899, art 11; and see also the London Gazette, 10 March 1953, p 1378. Fees recovered under the Distribution of German Enemy Property Act 1949 were to be paid into the Exchequer: s 7(2).

12 See *ibid* s 1(4)(b). The amount for which claims were to be permitted to rank was governed by the Distribution of German Enemy Property (No 2) Order 1951, SI 1951/1899, Pt IV (arts 5, 6).

13 See the Distribution of German Enemy Property Act 1949 s 1(2)(d), (g), (6); and the Distribution of German Enemy Property (No 2) Order 1951, SI 1951/1899, Pt V (arts 7-11) (amended by SI 1961/2030). The determination of the administrator in relation to a claim was final, subject to a right of appeal to the High Court on a point of law: see the Distribution of German Enemy Property (No 2) Order 1951, SI 1951/1899, art 7(2).

14 See the Distribution of German Enemy Property Act 1949 s 1(2)(e), (4)(c).

UPDATE

591 Collection, realisation and distribution of German enemy property

NOTE 2--SI 1948/116 amended: Lord Chancellor (Transfer of Functions and Supplementary Provisions) Order 2006, SI 2006/680.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(4) DISTRIBUTION OF ENEMY PROPERTY/592. German enemy property controlled by a United Kingdom company.

592. German enemy property controlled by a United Kingdom company.

Where any German enemy property¹, on or at any time after 3 September 1939, belonged to, or was held or managed on behalf of, a German company², and the company was on that day controlled, directly or indirectly, by a United Kingdom company³, that property⁴ may be treated as property to which the United Kingdom company would have been entitled but for the operation of the Trading with the Enemy Act 1939, or any order made under that Act⁵.

1 For the meanings of 'German enemy property' and 'property' see PARA 591 note 2 ante.

2 'German company' means a body incorporated in, or under the laws of, Germany: Distribution of German Enemy Property Act 1949 s 1(7).

3 'United Kingdom company' means a body incorporated in, or under the laws of, the United Kingdom: *ibid* s 1(7). As to the meaning of 'United Kingdom' for these purposes see PARA 591 note 3 ante; and see PARA 402 note 4 ante.

4 *Ie* for the purposes of *ibid* s 1(6) (see PARA 591 ante).

5 See *ibid* s 1(7).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(4) DISTRIBUTION OF ENEMY PROPERTY/593. Offences relating to the distribution of German enemy property.

593. Offences relating to the distribution of German enemy property.

If any person who: (1) is prohibited¹ from dealing with any German enemy property² otherwise than with the consent of the administrator³; or (2) is required⁴ to transfer such property to the administrator or otherwise to deal with it in accordance with the administrator's directions⁵, contravenes or fails to comply with the prohibition or requirement, he is guilty of an offence⁶. Any person who, without reasonable excuse, fails to comply with any requirement⁷ to furnish information or to produce books or documents⁸, or who, in giving such information, knowingly or recklessly makes a statement which is false in a material particular⁹, is guilty of an offence¹⁰.

A person guilty of an offence under these provisions is liable to a penalty¹¹.

1 *Ie* by or under an Order in Council made under the Distribution of German Enemy Property Act 1949 s 1 (see PARA 591 ante).

2 For the meaning of 'German enemy property' see PARA 591 note 2 ante.

3 Distribution of German Enemy Property Act 1949 s 2(1)(a). As to the administrator see PARA 591 note 6 ante.

4 *Ie* by or under an Order in Council made under *ibid* s 1 (see PARA 591 ante).

5 *Ibid* s 2(1)(b).

6 *Ibid* s 2(1).

7 *Ie* any requirement made by or under an Order in Council made under *ibid* s 1 (see PARA 591 ante).

8 *Ibid* s 2(2)(a).

9 *Ibid* s 2(2)(b).

10 *Ibid* s 2(2).

11 The penalty on summary conviction is a fine not exceeding the prescribed sum or imprisonment for a term not exceeding three months or both (Distribution of German Enemy Property Act 1949 s 2(3)(a) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2))), and on conviction on indictment is a fine or imprisonment for a term not exceeding two years or both (Distribution of German Enemy Property Act 1949 s 2(3)(b) (amended by virtue of the Criminal Law Act 1977 s 32(1))). As to the prescribed sum see PARA 475 note 9 ante.

Where the offence is committed by a body corporate, every person who was at the time of the offence a director, general manager, secretary or other similar officer of the body corporate is deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance and that he used due diligence to prevent its commission: see the Distribution of German Enemy Property Act 1949 s 2(4).

'Director' in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate: s 2(4). As to corporate liability generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38. Where an indemnity Act has been passed (see eg the Indemnity Act 1920 (repealed)), acts, other than malicious acts, will be protected: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 821. See also *Marshal Shipping Co v Board of Trade* [1923] 2 KB 343, CA; *Bristol Channel Steamers Ltd v R* (1924) 131 LT 608; *Brocklebank Ltd v R* [1925] 1 KB 52, CA; *Marshal Shipping Co (in liquidation) v R* (1925) 41 TLR 285 (all cases on the Indemnity Act 1920).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/6. ALIEN ENEMIES, TRADE AND PROPERTY/(4) DISTRIBUTION OF ENEMY PROPERTY/594. Resolution of conflicting claims.

594. Resolution of conflicting claims.

Where arrangements have been made by or on behalf of the government in the United Kingdom¹ with the government of any country outside the United Kingdom or any person acting on its behalf for the resolution of conflicting claims to German enemy property² and corresponding property under the control of the government of that country, the Treasury may, for the purpose of giving effect to those arrangements, direct the administrator to transfer to a specified person such German enemy property or proceeds as may be specified, and the administrator must comply with any such direction³. Any property transferred in pursuance of those arrangements to any person acting on behalf of the government in the United Kingdom must be transferred to the administrator and be dealt with in a like manner as German enemy property⁴.

1 As to the meaning of 'United Kingdom' for these purposes see PARA 591 note 3 ante; and see PARA 402 note 4 ante.

2 For the meaning of 'German enemy property' see PARA 591 note 2 ante.

3 Distribution of German Enemy Property Act 1949 s 3(a). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the administrator see PARA 591 note 6 ante.

4 Ibid s 3(b).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(1) WAR PENSIONS FOR MEMBERS OF THE ARMED FORCES AND DEPENDANTS/595. Form of pensions instruments for the armed forces.

7. WAR PENSIONS

(1) WAR PENSIONS FOR MEMBERS OF THE ARMED FORCES AND DEPENDANTS

595. Form of pensions instruments for the armed forces.

Any power of Her Majesty, whether under an enactment or otherwise, to make provision about pensions or other benefits for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown is exercisable by Order in Council¹ and also continues to be exercisable in any manner in which it may otherwise be

exercisable². Such an Order in Council may vary or revoke any instrument made otherwise than by Order in Council under these provisions in so far as the instrument relates to such pensions or other benefits³. In addition, Her Majesty may by Order in Council make such modifications as she considers appropriate⁴ in:

- 225 (1) any enactment relating to such pensions or other benefits as are mentioned above;
- 226 (2) any enactment by virtue of which and any instrument by which provisions relating to such pensions or other benefits may be or are applied to service otherwise than in the armed forces; and
- 227 (3) any other enactment or instrument which refers to, or to an instrument relating to, such pensions or other benefits⁵.

Pensions, grants and allowances in respect of death or disability which is due to service before 6 April 2005 as a member of the naval⁶, military⁷ or air forces⁸ of the Crown are payable in accordance with the provisions of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983 which was made by virtue of the above provisions⁹. Death or injury caused wholly or partly by service on or after 6 April 2005 may lead to the award of a prescribed benefit in accordance with the provisions of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005¹⁰. Neither the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983 nor the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 applies exclusively to death or disability resulting from service in time of war and their detailed provisions are set out elsewhere in this work¹¹.

Under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, where a claim is made in respect of disablement¹², or where death occurs, not later than seven years after the termination of service¹³, it will be accepted that the disablement or death is due to service if: (a) the disablement is due to an injury which is attributable to service or existed before or arose during service and has been, and remains, aggravated thereby¹⁴; or (b) the death was due to, or hastened by, an injury which was attributable to service or the aggravation by service of an injury which existed before or arose during service¹⁵. Where the claim is made in respect of disablement, or where death occurs, more than seven years after the termination of service, the disablement or death will be accepted as due to service if: (i) the disablement is due to an injury which is attributable to service before the commencement of the 1914-18 war, or after 30 September 1921 but before 6 April 2005, or which existed before or arose during such service and has been and remains aggravated thereby¹⁶; or (ii) the death was due to, or substantially hastened by, an injury which was attributable to service or the aggravation by service of an injury which existed before or arose during service¹⁷. 'Injury' for these purposes includes wound or disease but excludes any injury due to the effects of tobacco, and any injury due to the use of tobacco or the consumption of alcohol, except where the person concerned suffers from a mental condition attributable to service, the degree of disablement in respect of that condition has been assessed at 50 per cent or more and he started or continued to use tobacco or to consume or continue to consume alcohol due to that condition¹⁸. In considering the term 'due to service' issues of causation arise¹⁹, along with the burden of proof²⁰. Where the claim is made not later than seven years after the termination of service there is no onus on the claimant to prove that the disablement or death is due to service²¹ and where the claim is made more than seven years after the termination of service the benefit of any reasonable doubt as to whether the disablement or death was due to service is to be given to the claimant²².

Under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, a member or former member of the armed forces may claim benefit in respect of an injury occurring on or after 6 April 2005 caused by service²³. If the injury is not caused wholly by service, this must be the predominant cause of the injury²⁴. Benefit is also payable where death has been caused wholly or partly by service and occurs in service²⁵.

The term 'war pension' refers to pensions awarded under a number of different enactments²⁶.

- 1 See the Social Security (Miscellaneous Provisions) Act 1977 s 12(1). Such an order must be made by statutory instrument and laid before Parliament after being made: s 12(1).
- 2 Ibid s 12(1). For other powers to make provision for war pensions see PARA 597 et seq post.
- 3 Ibid s 12(3).
- 4 It is appropriate in consequence of the passing of ibid s 12(1) (see the text and notes 1, 2 supra) or the making of an order in pursuance thereof: s 12(2).
- 5 Ibid s 12(2). See the Naval, Military and Air Forces etc (Modifications of Enactments and other Instruments) Order 1978, SI 1978/1526; and PARAS 612, 614, 616-617 post.
- 6 'Member of the naval forces' means: (1) in relation to service before or during the 1914-18 war, a person defined for that purpose as an officer or rating; and (2) in relation to service after 30 September 1921, an officer or rating of the Royal Navy or the Royal Marines, excluding specified persons: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 1(2), Sch 4 Pt II item 33 (amended by SI 1996/1638). 'Member of the armed forces' means a member of the naval forces, the military forces, or, as the case may be, the air forces, and any provision of the service pensions order relating to a member of the armed forces is to be construed as relating also to a woman member or member whose service has ended; and 'member' is to be construed accordingly: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 4 Pt II item 31. As to service before or during the 1914-18 war see PARAS 597-598 post.
- 7 'Member of the military forces' means: (1) in relation to service before or during the 1914-18 war, a person defined for that purpose as an officer or soldier; and (2) in relation to service after 30 September 1921, an officer holding a commission in, or a soldier of, the army, whose unit is based in the United Kingdom or the Isle of Man, excluding specified persons: see ibid Sch 4 Pt II item 32 (amended by SI 1996/1638). See also note 6 supra. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.
- 8 'Member of the air forces' means: (1) in relation to service before or during the 1914-18 war, a person defined for that purpose as an officer or airman; and (2) in relation to service after 30 September 1921, an officer holding a commission in, or an airman of, the Royal Air Force, excluding specified persons: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 4 Pt II item 30 (amended by SI 1996/1638). See also note 6 supra.
- 9 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (amended by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 para 3(4); SI 1983/1116; SI 1983/1521; SI 1984/1154; SI 1984/1687; SI 1985/1201; SI 1986/592; SI 1987/165; SI 1988/248; SI 1988/2248; SI 1989/156; SI 1990/250; SI 1990/1308; SI 1991/766; SI 1992/710; SI 1992/3208; SI 1993/598; SI 1994/772; SI 1994/1906; SI 1995/766; SI 1996/732; SI 1996/1638; SI 1996/2882; SI 1997/286; SI 1999/294; SI 2001/409; SI 2002/792; SI 2003/434; SI 2004/708; SI 2005/851; SI 2005/1471). Payment was formerly made in accordance with Orders in Council made under the Naval and Marine Pay and Pensions Act 1865 (for naval forces), under Royal Warrants (for military forces), and in accordance with orders made by Her Majesty under the Air Force (Constitution) Act 1917 (for air forces).
- 10 See the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, SI 2005/439, made under the Armed Forces (Pensions and Compensation) Act 2004. Where a person is entitled to benefit under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, SI 2005/439, in respect of injury or death caused wholly or partly by service and occurring after 6 April 2005, no claim may be brought in respect of that injury or death for the purposes of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see art 4(1A) (added by SI 2005/851). The rules of the scheme under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, SI 2005/439, are to be construed without reference to any other scheme applicable to the armed forces: see art 6(2).
- 11 As to the service pensions to which all members of the armed forces may become entitled, whether or not they have seen war service, see ARMED FORCES vol 2(2) (Reissue) PARA 263 et seq.
- 12 'Disablement' means physical or mental injury or damage, or loss of physical or mental capacity; and 'disabled' is to be construed accordingly: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 4 Pt II item 22. As to determination of the degree of disablement see art 9 (amended by SI 1992/3208; SI 1996/1638; SI 2004/708; SI 2005/851). A disablement award may not be made in respect of noise-induced sensorineural hearing loss, or a related condition or symptom if it is accompanied by noise-induced sensorineural hearing loss, unless the degree of disablement from that loss alone is assessed as being at least 20%: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI

1983/883, art 8(2A) (art 8(2A), (2B) added by SI 1992/3208). 'Noise-induced sensorineural hearing loss' means damage to the cochlear hair cells of the inner ear which is caused by the exposure of the cochlea to noise; and a condition or symptom is to be treated as related to such hearing loss if it is another condition, or a symptom, which is the consequence of damage to the cochlear hair cells of the inner ear caused by the exposure of the cochlea to noise: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 8(2B) (as so added). An award in respect of the disablement of a member of the armed forces may not be made to take effect before the termination of his service or, in the case of an officer, while he is an officer on the Active List: see art 8(2).

13 For these purposes, 'service' means service as a member of the armed forces before the commencement of the 1914-18 war, or after 30 September 1921 but before 6 April 2005: *ibid* art 4(6) (amended by SI 1996/1638; SI 2005/851).

14 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(1)(a).

15 *Ibid* art 4(1)(b).

16 *Ibid* art 5(1)(a) (amended by SI 1996/1638; SI 2005/851).

17 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 5(1)(b).

18 *Ibid* Sch 4 Pt II item 27 (substituted by SI 1994/772).

19 See PARAS 600, 605 note 6, 623 note 4 post.

20 As to the burden of proof in relation to civilian injuries see PARA 605 post.

21 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(2).

22 See *ibid* art 5(4).

23 See the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, SI 2005/439, art 7(1).

24 See *ibid* art 7(2).

25 See *ibid* art 9.

26 'War pension' means:

40 (1) any pension or other benefit, payable otherwise than under an enactment, for or in respect of a person who has died or been disabled in consequence of service as a member of the armed forces of the Crown;

41 (2) any pension or benefit awarded under the Personal Injuries (Emergency Provisions) Act 1939 (see PARA 601 et seq post), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 (see PARA 609 et seq post), or the Polish Resettlement Act 1947 (see PARA 617 post);

42 (3) any pension or other payment which constitutes such an obligation as is mentioned in the Statute Law Revision Act 1958 s 4(1) (see PARA 615 post);

43 (4) any other pension or benefit which is specified in an order made by the Secretary of State for these purposes,

but does not include any pension or benefit administered by the Defence Council, or the Commissioners for the Royal Hospital for Soldiers at Chelsea, or a pension or benefit administered by the Minister of the Crown with responsibility for defence (except one administered by him in the exercise of functions transferred to him from the Secretary of State for Social Security): Social Security Act 1989 s 25(4) (amended by the Transfer of Functions (War Pensions etc) Order 2001, SI 2001/3506, art 5, Schedule para 3).

For the role of war pensions committees see PARAS 618-621 post.

UPDATE

595-599 Form of pensions instruments for the armed forces ... Pensions instruments for persons other than members of the armed forces

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

595 Form of pensions instruments for the armed forces

NOTE 9--See also the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions (Correction of 2004 Uprating) Order 2007, SI 2007/1350.

NOTE 10--As to the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, SI 2005/439, see ARMED FORCES vol 2(2) (Reissue) PARA 266A.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(1) WAR PENSIONS FOR MEMBERS OF THE ARMED FORCES AND DEPENDANTS/596. Legal right to pensions and method of payment.

596. Legal right to pensions and method of payment.

The service pensions order¹ provides that, subject to the fulfilment of the relevant conditions, an award of a pension, grant or allowance may be made². A claim for an award of any pension or allowance under the service pensions order must state the pension or allowance being claimed and must be made to the Secretary of State³ either in a form approved by him for that purpose or in such other manner, whether in writing or otherwise, as he may accept as sufficient in any case⁴. However, the service pensions order does not impose any obligation on the Secretary of State to carry out its provisions beyond the duty he owes to the Crown, and it seems that no action will lie against him at the suit of an applicant in respect of his administration of that order or against decisions he makes in the course of carrying it out⁵. Where the Secretary of State has made an award under any Royal Warrant, Order in Council, or order or scheme administered by him⁶ in respect of the incapacity for work, disablement or death of any person, the person to whom the award has been made has a right to receive the sums payable thereunder⁷.

Payment of a pension may be made provisionally or upon any other basis⁸. Pension awarded in terms of a weekly amount may be paid weekly in advance and pension not awarded in such terms may be paid quarterly or monthly in arrears⁹. Pension must be paid by such means as appear to the Secretary of State to be appropriate in the circumstances of the case or class of case¹⁰. Where, by reason of any provision in any instrument which amends a provision of the service pensions order, a change falls to be made in the rate of any pension which is payable weekly, and the date on which that change would otherwise fall to be made ('the prescribed date') is not the day of the week on which payment of pension is normally made ('the weekly pay day'), that change has effect only as from the first weekly pay day immediately following the prescribed date¹¹.

The Secretary of State may direct in relation to any particular case or class of case that a pension is to be paid by way of automated or other direct credit transfer into a bank or other account in the name of the person entitled to the pension or a person acting on his behalf, or in the joint names of the person entitled to the pension and his spouse, or the person entitled to the pension and a person acting on his behalf¹². Pension so paid must be paid for periods of four weeks, or for such other periods as the Secretary of State may in any particular case or class of case determine¹³. It must be paid within seven days of the last day of each successive period so determined, and may be paid in advance, or in arrears, or partly in advance and

partly in arrears, as the Secretary of State may in any particular case or class of case determine¹⁴. Payment of pension in this way may be terminated by the Secretary of State if the arrangement seems to him to be no longer appropriate to the particular case or class of case¹⁵.

In determining whether a pension is payable to a person as a widow under the service pensions order in respect of any period beginning on or after 19 July 1995, no account may be taken of the fact that the widow has married another if, before the beginning of that period, the marriage has been terminated or the parties have been judicially separated¹⁶.

1 Ile the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended). See also the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, SI 2005/439, in respect of injury or death occurring on or after 6 April 2005 caused wholly or partly by service; and PARA 595 ante.

2 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3 (substituted by SI 1996/2882; and amended by SI 2005/851).

3 As to the Secretary of State for these purposes see PARAS 625-627 post.

4 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3A(1)(a) (arts 3A-3C added by SI 1996/2882; and the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3A(1) amended by SI 1997/286; SI 2005/851). As to the pensions, allowances and awards to which this requirement applies see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3A(2) (as so added; and amended by SI 1997/286; SI 2002/792). As to where a claim is not required see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3B (as so added; and amended by SI 2002/792). As to the procedure for withdrawing claims see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3C (as so added).

5 See *Griffin v Lord Advocate* 1950 SC 448 at 450, Ct of Sess per Lord Sorn; approved in *Jennings v Minister of Pensions* (2 February 1953, unreported), where, in dismissing a claim for a declaration that the plaintiff was entitled to a disability pension, Parker J said that it was plain that, apart from statute, no claim could be brought against any persons or person administering a Royal Warrant. Quaere, however, if an Order in Council is made not in the exercise of the prerogative but under a power delegated to the Crown by Parliament: see *Griffin v Lord Advocate* supra at 451 per Lord Sorn. See also the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended), which was (and amendments to which continue to be) made under powers granted by the Personal Injuries (Emergency Provisions) Act 1939 ss 1, 2; and see PARA 601 et seq post.

6 Ile any such Royal Warrant, Order in Council, order or scheme as is referred to in the Pensions Appeal Tribunals Act 1943 ss 1-3 (as amended): see PARA 624 post.

7 Ibid s 11. This provision does not, however, affect any condition to which the award or any payment thereunder is subject, or any power of the Secretary of State to vary or revoke the award, or to withhold, reduce or apply any payment thereunder, in accordance with any provision of the Royal Warrant, Order in Council, order or scheme: s 11 proviso. See also the War Pensions (Administrative Provisions) Act 1919 s 7; the War Pensions Act 1920 s 8 (as amended); and PARA 597 post.

8 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 66(1A) (art 66(1A)-(1D) added by SI 1988/2248).

9 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 66(1B) (as added: see note 8 supra). The Secretary of State may in any particular case or class of case determine that pension is to be paid in advance or in arrears or partly in advance and partly in arrears, and for a period different from that so specified: art 66(1C) (as so added).

10 Ibid art 66(1D) (as added: see note 8 supra).

11 Ibid art 66(2) (added by SI 1984/1154; and amended by SI 1988/2248).

12 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 65A(1) (art 65A added by SI 1988/2248).

13 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 65A(2)(a) (as added: see note 12 supra).

14 Ibid art 65A(2)(b), (c) (as added: see note 12 supra). Where pension is so payable, the Secretary of State may make a particular payment by credit transfer otherwise than as provided by art 65A(2) (as added) if it appears to him to be appropriate to do so for the purpose of paying any arrears of pension or making a payment of pension at the termination of an award: art 65A(3) (as so added).

15 Ibid art 65A(4) (as added: see note 12 supra).

16 Pensions Act 1995 s 168(1), (3)(a). For these purposes, the reference to the termination of a marriage is a reference to the termination of the marriage by death, dissolution or annulment, and the reference to judicial separation includes any legal separation obtained in a country or territory outside the British Islands and recognised in the United Kingdom; and a divorce, annulment or legal separation obtained in a country or territory outside the British Islands must, if the Secretary of State so determines, be treated as recognised in the United Kingdom even though no declaration as to its validity has been made by any court in the United Kingdom: s 168(2). The 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978 s 5, Sch 1. For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

UPDATE

595-599 Form of pensions instruments for the armed forces ... Pensions instruments for persons other than members of the armed forces

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

596 Legal right to pensions and method of payment

TEXT AND NOTE 16--Pensions Act 1995 s 168(1), (1A) substituted, for s 168(1) as originally enacted and s 168(2), (3)(a) amended: Pensions Act 2008 s 138.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(1) WAR PENSIONS FOR MEMBERS OF THE ARMED FORCES AND DEPENDANTS/597. Applications and awards in respect of service in the 1914-18 war.

597. Applications and awards in respect of service in the 1914-18 war.

Every officer¹ or man suffering from a disability attributable to, or aggravated by, naval, military or air force service during the 1914-18 war² and not due to his serious negligence or misconduct is entitled to receive such pension, gratuity or allowance as may be awarded by the Secretary of State³ under any warrant or Order in Council in respect of such disability, and for the payment of which money has been provided by Parliament⁴. The widow, or dependant of a deceased officer or man is also entitled to receive such pension, gratuity or allowance as is awarded by the Secretary of State under any warrant or Order in Council for the time being in force in respect of that officer or man and for the payment of which money has been provided by Parliament⁵.

An application for a pension in respect of service in the 1914-18 war had to be made within seven years of the termination of active service or, at latest, by 31 August 1928⁶. Strictly speaking, all applications now made are therefore out of time except where death has occurred or a fresh disability has arisen as the direct result of a disability which has already been accepted, or where there is deterioration of an accepted disability. However, applications which would otherwise be out of time are accepted under powers conferred by the provisions of dispensing instruments⁷ in pursuance of an undertaking given by the then Minister of Pensions in the House of Commons in 1929⁸. Pensions, grants and allowances in respect of death or

disability which is due to such service are now payable under the provisions of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983⁹.

1 The entitlement to a disability pension also extends to nurses: see the War Pensions (Administrative Provisions) Act 1919 s 9.

2 The statutory expression used is 'this present war' which is defined as any war carried on by His Majesty at any time during the period from the fourth day of August 1914 to the thirtieth day after the date fixed under the Termination of the Present War (Definition) Act 1918 as the date of the termination of that war, both inclusive: see the War Pensions Act 1920 s 2. References in the War Pensions Acts to pensions, grants and allowances, and to deceased or disabled officers or men, are to be construed as references to pensions, grants and allowances granted, made or awarded in respect of wounds, disablements or other matters suffered, incurred or happening during that period, whether the officers or men to or in respect of whom the pensions, grants or allowances are granted, made or awarded retired or were discharged from the service, or died before the expiration of that period, or whether they retired or were discharged or died after the expiration of that period, and to officers and men who died or were disabled through causes arising out of their service during that period, whether they retired or were discharged from the service or died before the expiration of that period, or whether they so retired, or were discharged, or died after the expiration of that period: see the War Pensions Act 1920 s 2. The date of termination of the war was declared to be 31 August 1921: see the Termination of the Present War (Definition) Act 1918 s 1 (repealed); and the Order in Council declaring the Date of the Termination of the War dated 10 August 1921, SR & O 1921/1276. 'The War Pensions Acts' means the Naval and Military War Pensions etc Act 1915 (which makes provision for the care of disabled officers and men after they have left the service); the Naval and Military War Pensions etc (Expenses) Act 1916 (repealed); in so far as it relates to the statutory committee (now dissolved), the Ministry of Pensions Act 1916 (repealed); the Naval and Military War Pensions etc (Administrative Expenses) Act 1917 (which makes provision for the application of certain voluntary funds); the Naval and Military War Pensions etc (Transfer of Powers) Act 1917 (repealed); the Naval and Military War Pensions etc (Committees) Act 1917 (repealed); the War Pensions (Administrative Provisions) Act 1918 (war orphans: see PARA 626 post); the War Pensions (Administrative Provisions) Act 1919 (see the text and notes 3-4 infra); the War Pensions Act 1920; and the War Pensions Act 1921 (see the text and note 6 infra): see s 10(1).

3 As to the Secretary of State for these purposes see PARAS 625-627 post.

4 War Pensions (Administrative Provisions) Act 1919 s 7 (amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)(a)).

5 War Pensions Act 1920 s 8(1) (amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)(a)). As from a day to be appointed, the War Pensions Act 1920 s 8(1) (as amended) is further amended so as to include civil partners: s 8(1) (as so amended; and amended by the Civil Partnership Act 2004 Sch 26 para 12). At the date which this volume states the law, no such day had been appointed. The award of any such pension, gratuity or allowance is subject to the conditions contained in the warrant or order: see the War Pensions (Administrative Provisions) Act 1919 s 7; and the War Pensions Act 1920 s 8(1) (as so amended). In the case of a widow or dependant, entitlement arises:

- 44 (1) if the member of the armed forces in respect of whom the claim is made was killed while in the performance of military, naval or air force duty during the 1914-18 war, or died as the result of wounds or injuries received in the performance of that duty within seven years of receiving the wounds or injuries; or
- 45 (2) if he died of a disease certified as contracted or commencing while on active service during the war or as having been aggravated by that service, within seven years of his removal from duty on account of the disease,

provided his death was not caused by his serious negligence or misconduct: see the Order in Council dated 11 June 1920, SR & O 1920/1021 (seamen and marines); the Order in Council dated 9 March 1921, SR & O 1921/360 (officers and nurses); the Order in Council dated 9 March 1921, SR & O 1921/361 (warrant officers); the Royal Warrants dated 6 December 1919 (Cmd 457), 2 July 1920 (Cmd 811), 30 May 1949 (Cmd 7712), 28 June 1962 (Cmd 1776); HC Paper (1920) No 120; HC Paper (1948-49) No 250 (amended by Cmd 1774 (1962)). Entitlement also arose where the deceased was in receipt of a pension at the date of death and either the death was wholly due to the pensionable disability, or the pension was assessed at not less than 40% disability and in the opinion of the Secretary of State the circumstances of his death justified an award: Royal Warrant dated 6 December 1919 (Cmd 457) arts 17A, 17B (added by Royal Warrant dated 14 January 1924 (Cmd 2030)); Royal Warrant dated 2 July 1920 (Cmd 811) arts 16A, 16B (added by Royal Warrant dated 2 September 1924 (Cmd 2251)). As to entitlement to awards generally see now the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Pt II (arts 3-7) (as amended); as to awards in respect of disablement see Pt III (arts 8-26A) (as amended); as to awards in respect of death see Pt IV (arts 27-42) (as amended). See generally para 595 ante; and ARMED FORCES vol 2(2) (Reissue) PARA 263 et seq.

6 See the War Pensions Act 1921 ss 5, 10(2) (amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)(a)). See also note 2 supra.

7 See the Order in Council dated 19 December 1881; the Royal Warrant dated 27 October 1884; and the Order by His Majesty dated 14 January 1922.

8 See 232 HC Official Report (5th series), 18 November 1929, cols 23-26.

9 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see note 5 supra; and PARA 595 ante.

UPDATE

595-599 Form of pensions instruments for the armed forces ... Pensions instruments for persons other than members of the armed forces

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

597 Applications and awards in respect of service in the 1914-18 war

NOTE 2--Naval and Military War Pensions Act 1915 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(1) WAR PENSIONS FOR MEMBERS OF THE ARMED FORCES AND DEPENDANTS/598. Awards in respect of service in earlier wars.

598. Awards in respect of service in earlier wars.

Owing to the lapse of time, questions relating to pensions or grants awarded in respect of wounds, disabilities or other matters in any war which occurred before 4 August 1914 have virtually ceased to arise¹. The persons to whom they applied and the conditions under which they were granted were contained in Royal Warrants in the case of soldiers² and in Orders in Council³ in the case of seamen and marines⁴. From 29 July 1996, the definition of 'service' in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983⁵ has been extended to include service before the commencement of the 1914-18 war or after 30 September 1921 and not merely after 2 September 1939, as previously⁶, and any such pensions are thus payable under the provisions of that order⁷.

1 The principle of paying pensions or making equivalent grants in land, as compensation for war disablement, goes back to the reign of King Alfred, and for centuries took the form of voluntary payments at the goodwill of the pensioner's former commander. In the sixteenth century statutory provision was first made for payments to be made from the proceeds of rates levied on the locality in which the man enlisted: see eg 35 Eliz I c 4 (Disabled Soldiers) (1592-3) (repealed); 39 Eliz I c 21 (Disabled Soldiers) (1597-8) (repealed); and 43 Eliz I c 3 (Disabled Soldiers) (1601) (repealed). The Royal Chelsea Hospital for soldiers was opened in 1690, and the Greenwich Hospital for sailors in 1705: see further ARMED FORCES vol 2(2) (Reissue) PARAS 165, 270. In 1854 the Patriotic Fund (later the Royal Patriotic Fund) was established by public subscription, from which small pensions for widows were paid and provision was made for the care and education of orphans: see ARMED FORCES vol 2(2) (Reissue) PARA 298. At the outbreak of the 1914-18 war, pensions were administered by four authorities, namely the War Office, the Admiralty, the Chelsea Commissioners and the Royal Patriotic Fund Corporation. As to the transfer of these functions to the Minister of Pensions and thence to the Secretary of State see PARAS 625-627 post.

- 2 See eg the Royal Warrant dated 1 November 1920 (Cmd 1034).
- 3 See eg the Order in Council dated 27 May 1921, SR & O 1921/967.
- 4 The provisions regarding officers and nurses disabled in consequence of former wars were contained in Royal Warrants dated 1 December 1914, 1 August 1917, 19 December 1919, 8 September 1923 (army); and in the Order in Council, dated 13 August 1920, SR & O 1920/1669, the Order in Council dated 13 October 1920, SR & O 1920/2088, the Order in Council dated 27 March 1923, SR & O 1923/407, and the Order in Council dated 11 October 1923, SR & O 1923/1239 (navy and marines). Generally, the effect of these warrants and orders was to increase pensions in respect of disablement in former wars to the level of pensions in respect of disablement in the 1914-18 war.
- 5 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see PARA 595 ante.
- 6 See *ibid* arts 4, 5, 9-11, 21, 67, Schs 1, 2, 4 (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 254 et seq.
- 7 See note 6 *supra*; and PARA 595 ante. This change was made in consequence of a transfer of responsibilities for such pensions from the Ministry of Defence to the Department of Social Security.

UPDATE

595-599 Form of pensions instruments for the armed forces ... Pensions instruments for persons other than members of the armed forces

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

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(2) OTHER WAR PENSIONS

(i) In general

599. Pensions instruments for persons other than members of the armed forces.

The provisions of the service pensions order¹ have been applied with modifications by schemes made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, as amended by the Pensions (Mercantile Marine) Act 1942², to members of the merchant navy and the sea fishing service³, and to naval auxiliary personnel⁴, in cases where death or disablement is directly attributable⁵ to a qualifying injury⁶ or to detention⁷; another such scheme provides benefits for coastguards⁸. A scheme with provisions substantially similar to those of the service pensions order concerning pensions for members of the military forces has been made under the Polish Resettlement Act 1947 for members of the former Polish forces⁹; and provision for civilians who suffered war injuries¹⁰, or, being civil defence volunteers, war service injuries¹¹, has been made by a scheme¹² under the Personal Injuries (Emergency Provisions) Act 1939. Pensions and other benefits under these instruments are all administered by the Secretary of State for Defence¹³.

- 1 le the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see PARA 595 ante.
- 2 See PARA 609 et seq post.
- 3 See the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058 (amended by SI 1972/1434; SI 1978/1526; SI 1988/639; SI 1989/540; SI 1993/692; SI 1997/811; SI 2001/419; and prospectively amended by SI 2005/3033); and PARAS 612-613 post.
- 4 See the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985 (amended by SI 1972/1436; SI 1989/540; SI 1993/692); and PARA 614 post.
- 5 As to the meaning of 'attributable' see ARMED FORCES vol 2(2) (Reissue) PARA 278.
- 6 le a war injury or a war risk injury: see PARA 600 post.
- 7 See the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, art 4; the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, art 4; and PARA 612 et seq post. For the meaning of 'detention' see PARA 609 note 4 post. The War Pensions (Indian Seamen etc) Scheme 1944, SR & O 1944/1083, and the War Pensions (Chinese Seamen etc) Scheme 1944, SR & O 1944/1186, which formerly provided for a lower rate of war pension to be payable to certain non-British seamen, have been revoked.
- 8 See the War Pensions (Coastguards) Scheme 1944, SR & O 1944/500 (amended by SI 1989/540; SI 1993/692); and PARA 614 post.
- 9 See the Pensions (Polish Forces) Scheme 1964, SI 1964/2007 (amended by SI 1967/293; SI 1972/1435; SI 1974/1045; and prospectively amended by SI 2005/3040); and PARA 617 post.
- 10 For the meaning of 'war injury' see PARA 600 post.
- 11 For the meaning of 'war service injury' see PARA 601 note 5 post.
- 12 le the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (amended by SI 1983/1164; SI 1983/1540; SI 1984/1289; SI 1985/1313; SI 1986/628; SI 1987/191; SI 1988/367; SI 1988/2260; SI 1989/415; SI 1990/535; SI 1990/1300; SI 1991/708; SI 1992/702; SI 1992/3226; SI 1993/480; SI 1994/715; SI 1994/2021; SI 1995/445; SI 1996/502; SI 1997/812; SI 1999/262; SI 2001/420; SI 2002/672; SI 2004/717; SI 2005/655; SI 2005/1639; and prospectively amended by SI 2005/3031): see PARA 601 et seq post. Any assignment of, or charge on, an award under the scheme is void and an award does not pass to any trustee in bankruptcy: see the Personal Injuries (Emergency Provisions) Act 1939 s 7; and see CHOSSES IN ACTION vol 13 (2009) PARA 80 et seq.
- 13 See PARA 625 post.

UPDATE

595-599 Form of pensions instruments for the armed forces ... Pensions instruments for persons other than members of the armed forces

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

599 Pensions instruments for persons other than members of the armed forces

NOTES 3, 9, 12--Amendments made by SI 2005/3033 in force 5 December 2005.

NOTE 3--SI 1964/2058 further amended: SI 2008/2683.

NOTE 9--SI 1964/2007 further amended: SI 2009/436.

NOTE 12--SI 1983/686 further amended: SI 2006/765, SI 2007/646, SI 2008/592, SI 2008/2683, SI 2009/438.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(i) In general/600. War injuries, war risk injuries and war damage.

600. War injuries, war risk injuries and war damage.

'War injuries' means physical injuries: (1) caused by the discharge of any missile (including liquids and gas), by the use of any weapon, explosive or other noxious thing or by the doing of any other injurious act either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or (2) caused by the impact on any person or property of any enemy aircraft or any aircraft belonging to or held by any person on behalf of, or for the benefit of, the Crown or any allied power, or any part of or anything dropped from such aircraft¹.

'War damage' means loss of or damage to a person's effects caused as described in head (1) or head (2) above².

'War risk injury' means a physical injury sustained on or after 3 September 1939 at sea or in any other tidal water or in the waters of any harbour and attributable to:

- 228 (a) the taking of measures³ to avoid, prevent or hinder enemy action against ships; or
- 229 (b) the absence by reason of war of any aid to the navigation of ships; or
- 230 (c) the carriage by reason of war of any cargo in a manner which would be abnormal in peacetime as involving danger to the ship; or
- 231 (d) the existence on board ship of any other conditions arising out of war which would be abnormal in peacetime⁴,

provided that risk of the peril which caused the injury is substantially increased thereby⁵.

A physical injury for the purposes of a war injury or a war risk injury includes tuberculosis and any other organic disease, and the aggravation of that disease⁶. It is not necessary to prove a traumatic cause, but an injury which is purely mental is not a physical injury for these purposes⁷. However, where mental disablement results from a physical injury, an award may be made in respect of the mental disablement⁸. Combating the enemy must be interpreted in a restricted sense and does not include the enforcement of a blackout⁹ and there cannot be a qualifying injury on board ship in the absence of conditions arising out of the war which would be abnormal in time of peace¹⁰.

Issues of causation have arisen in a number of reported cases. The 'discharge of any missile,' for example, need only be 'a' cause of the injury¹¹. Thus the tampering by a child with an incendiary bomb did not prevent the dropping of the bomb by the enemy from being a cause of the claimant's injuries¹².

1 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 10; Personal Injuries (Emergency Provisions) Act 1939 s 8(1); and see the War Pensions (Coastguards) Scheme 1944, SR & O 1944/500, art 1(14); the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, art 2(14), Sch 1 para 1; the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, art 2(35), Sch 1 para 1; the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(23) (amended by SI 1985/1313). Injuries which are not war injuries within the statutory definition may still attract compensation: see heads (a)-(d) in the text; and see also the Pensions (Mercantile Marine) Act 1942 s 1(2); and PARA 609 note 7 post.

2 See the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 10.

3 'Measures' does not include the prohibition or restriction of lights in the waters of a harbour other than navigational lights: see the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, Sch 1 para 2

proviso (i); and the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, Sch 1 para 2 proviso (i). See also *Bodman v Minister of Pensions* (1946) 1 WPAR 259; cf *Constable v Minister of Pensions* (1946) 1 WPAR 275.

4 War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, Sch 1 para 2; and the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, Sch 1 para 2. Cf the War Pensions (Coastguards) Scheme 1944, SI 1944/500, art 2(15) (applying the Pensions (Mercantile Marine) Act 1942 s 1(2)); and see PARA 614 post.

5 War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, Sch 1 para 3; War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, Sch 1 para 3. See *Makin v Masson* [1948] LJR 325, CA (where carriage of an apparatus known as a torpedo defence boom was held to constitute a substantial increase of the risk of peril); *Morris v Minister of Pensions* (1947) 1 WPAR 595.

6 Pensions (Mercantile Marine) Act 1942 s 5; War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, Sch 1 para 4(c); War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, Sch 1 para 4(b); Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(18). See also *Goodman v Minister of Pensions* (1951) 5 WPAR 13; *Baird v Minister of Pensions* (1946) 1 WPAR 169 (psychoneurosis).

7 *Ex p Haines* [1945] KB 183, [1945] 1 All ER 349.

8 *Clarke v Minister of Pensions* (1946) 1 WPAR 233.

9 *Re Kemp* [1945] 1 All ER 571, 1 WPAR 55; *Bodman v Minister of Pensions* (1946) 1 WPAR 259. See also *Cameron v Minister of Pensions* (1944) 2 WPAR 415; *Minister of Pensions v Ffrench* [1946] KB 260, [1946] 1 All ER 272.

10 *Minister of Pensions v Jones* (1947) 1 WPAR 649.

11 It is not necessary that the discharge of the missile or other event should be 'the' cause of the injury in the sense either of the sole cause or of the effective and predominant cause: *Minister of Pensions v Chennell* [1947] KB 250 at 252, [1946] 2 All ER 719 at 720 per Denning J.

12 *Minister of Pensions v Chennell* [1947] KB 250, [1946] 2 All ER 719; and see also *Minister of Pensions v Williams (OL)* [1947] KB 875, [1947] 2 All ER 93. As to the effect of serious negligence or misconduct see PARA 623 note 4 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(ii) Civilian Injuries/601. Power to make a scheme in respect of civilian injuries.

(ii) Civilian Injuries

601. Power to make a scheme in respect of civilian injuries.

The former Minister of Pensions was given power which has now been transferred to the Secretary of State to make a scheme with the approval of the Treasury¹ providing for the making of payments in respect of the following injuries sustained during the period of the 1939-46 emergency²: (1) war injuries³ sustained by gainfully occupied persons⁴, with such exceptions, if any, as might or may be specified in the scheme and by persons of such other classes as might or may be so specified; and (2) war service injuries⁵ sustained by civil defence volunteers⁶. In respect of any such injury, a scheme may authorise the Secretary of State to make the following payments, in such circumstances and subject to such conditions as may be specified in it, to or in respect of the person injured:

232 (a) payments by way of allowance ('injury allowance') which are to be payable only so long as the person injured is incapacitated for work by the injury and has not received any such payments as are mentioned below⁷; and

233 (b) payments by way of pension or grant, which are to be payable only where the injury causes serious and prolonged disablement or death⁸.

Any decision of the Secretary of State as to the making, refusal or amount, or as to the continuance or discontinuance, of a payment under a scheme may be varied by a subsequent decision of his, but save in so far as it is so varied it is final and conclusive⁹, subject to certain limited rights of appeal¹⁰.

1 As to the devolution of these powers to the Secretary of State see PARAS 625-627 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 The statutory expression used is 'the period of the present emergency' which means the period beginning with the commencement of the Personal Injuries (Emergency Provisions) Act 1939 (ie 3 September 1939) and ending with such date as His Majesty might by Order in Council declare to be the date on which the emergency that was the occasion of the passing of that Act came to an end: s 8(1). That date was 19 March 1946: see the Personal Injuries (Emergency Provisions) Act (End of Emergency) Order 1946, SR & O 1946/379. As respects war service injuries sustained by members of the National Fire Service, however, the period continued until 1 April 1948, except that the Personal Injuries (Emergency Provisions) Act 1939 s 3 (repealed) did not apply after 19 March 1946: see the Emergency Laws (Transitional Provisions) Act 1946 s 4(2) (repealed); and the Fire Services Act 1947 s 39(3), Sch 5 (repealed). See also the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(17); and *Willcock v Muckle* [1951] 2 KB 844, [1951] 2 All ER 367 (to bring any of the emergency Acts to an end there must be an Order in Council dealing with that particular Act).

3 For the meaning of 'war injuries' see PARA 600 ante.

4 'Gainfully occupied person' means a person who is engaged in any trade, business, profession, office, employment or vocation and is wholly or substantially dependent thereon for a livelihood, or a person who, though temporarily unemployed, is normally so engaged and dependent: Personal Injuries (Emergency Provisions) Act 1939 s 8(1). See also the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(12). This definition must be satisfied at the time when the qualifying injury is sustained: see art 2(12), (14). 'Qualifying injury' means a war injury or war risk injury: see art 2(20); and PARA 600 ante.

5 'War service injury', in relation to any civil defence volunteer, means a physical injury which the Secretary of State certifies to have been shown to his satisfaction to have arisen out of and in the course of the performance by the volunteer of his duties as a member of the civil defence organisation to which he belonged when the injury was sustained, and (except in the case of a war injury) not to have arisen out of and in the course of his employment in any other capacity: Personal Injuries (Emergency Provisions) Act 1939 s 8(1). See also the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(24). 'Civil defence organisation' means any organisation established for civil defence purposes which is declared by a scheme made under the Personal Injuries (Emergency Provisions) Act 1939 to be a civil defence organisation for the purpose of that Act and the scheme; and 'civil defence volunteer', in relation to an injury, means a person certified by a responsible officer of a civil defence organisation to have been a member of that organisation at the time when the injury was sustained: Personal Injuries (Emergency Provisions) Act 1939 s 8(1); and see the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 2(5), (6), 4, Sch 1. No certificate may be given by the Secretary of State in relation to the definition of 'war service injury' for these purposes unless he has been furnished with a report about the injury in question by a responsible officer of the civil defence organisation of which the volunteer concerned was a member at the time when the injury was sustained; and any such certificate may be revoked by the Secretary of State at any time on new facts being brought to his notice: Personal Injuries (Emergency Provisions) Act 1939 s 8(2).

6 *Ibid* s 1(1). See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended); and PARAS 599 note 12 ante, 602 et seq post. A scheme may provide that it is to come into operation, or is to be deemed to have come into operation, on such date as may be specified in it; and it may be amended or revoked by a subsequent scheme or by an order made by the Secretary of State with the consent of the Treasury: Personal Injuries (Emergency Provisions) Act 1939 s 2(1), (2). Every scheme, and every order so made, must be laid before both Houses of Parliament as soon as may be after it is made; and if either House, within the period of 40 days beginning with the day on which a scheme or such an order is laid before it, resolves that the scheme or order be annulled, it becomes void, but without prejudice to the validity of anything previously done under it, or to the making of a new scheme or order: s 2(3).

7 *Ibid* s 1(2)(a). In practice it is unlikely, in view of the passage of time, that any payments under s 1(2)(a) are now being made.

8 *Ibid* s 1(2)(b). A scheme may empower the Secretary of State to make regulations for giving effect to the purposes of the scheme: s 1(3). All expenses incurred by him in giving effect to a scheme must be defrayed out of money provided by Parliament: s 1(5).

9 *Ibid* s 1(4).

10 See the Pensions Appeal Tribunals Act 1943 s 3; and PARA 624 post.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(ii) Civilian Injuries/602. Applications by civilians.

602. Applications by civilians.

As a general rule¹, applications for pensions under the civilian injuries scheme² had to be made within a period of three months from the date on which the qualifying injury³ causing the disablement was sustained⁴, or the relevant death occurred⁵, but the Secretary of State⁶ may direct otherwise with respect to any particular case or class of case⁷. An application must state the pension, allowance or benefit being claimed and must be made to the Secretary of State either in a form approved by him for that purpose or in such other manner, whether in writing or otherwise, as he may accept as sufficient in any case⁸.

1 Where the application is in respect of disablement caused by a war injury to a person not gainfully occupied and under the age of 15, the three-month period runs from the fifteenth birthday, and where the disabled person was, on the material date, a whole-time serving member of the armed forces of the Crown, it runs from the date on which he ceased to give such whole-time service: Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 54(2)(b), (c). For the meaning of 'gainfully occupied person' see PARA 601 note 4 ante.

2 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended).

3 For the meaning of 'qualifying injury' see PARA 601 note 4 ante.

4 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 54(2)(a).

5 See *ibid* art 54(3) (amended by SI 1987/191; SI 2002/672).

6 As to the Secretary of State for these purposes see PARAS 625-627 post.

7 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 54(1) (amended by SI 1986/628).

8 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 54(1A) (added by SI 1986/628).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(ii) Civilian Injuries/603. Entitlement to awards.

603. Entitlement to awards.

Under the civilian injuries scheme¹, awards may be made in respect of war injuries² sustained by gainfully occupied persons³, war injuries sustained by persons not gainfully occupied⁴ and war service injuries⁵ sustained by civil defence volunteers⁶ which, in each case, were so sustained in the period of the emergency⁷. Subject to certain exceptions⁸, an award may not be made in respect of a qualifying injury⁹ sustained outside the United Kingdom by a person ordinarily resident outside the United Kingdom or by a person ordinarily resident there while he was absent for personal, domestic or pleasure purposes¹⁰. Where the qualifying injury or death in respect of which a claim for an award is or has been made was caused or contributed to by the serious negligence or misconduct of the person concerned, the Secretary of State¹¹ may withhold, cancel or reduce any such award¹². Moreover, where a person who has sustained a qualifying injury or to whom an award in respect of another person has been made is or becomes ordinarily resident outside the United Kingdom, the Secretary of State may withhold or cancel any award of a pension to or in respect of that person or may, if he thinks fit having

regard to the circumstances of the case, including the standard of living in the place where that person is or has become ordinarily resident, reduce the amount of the award¹³. The scheme does not apply to injuries sustained by members of visiting and allied forces¹⁴.

If the person suffering a war injury, as distinct from a war service injury, was not gainfully occupied and was under the age of 15 or, being over that age, was a student or apprentice¹⁵, he is treated for the purposes of the scheme as if he were gainfully occupied unless immediately before the injury was sustained he was suffering from a physical or mental disability to such an extent as to preclude the likelihood of his ever being able to earn his living¹⁶, but no disablement award¹⁷ may be made to such a person in respect of any period before he attained the age of 15 and then only if the conditions governing the making of an award are then satisfied¹⁸.

A pension or allowance awarded to a person will not cease if that person marries or begins to live with another person as the spouse of that person on or after 6 April 2005¹⁹.

1 Ie the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended).

2 For the meaning of 'war injury' see PARA 600 ante.

3 Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 5(1)(a). For the meaning of 'gainfully occupied person' see PARA 601 note 4 ante. As to awards in respect of the disablement of such persons see Pt III (arts 8-25B) (as amended); and as to awards in respect of their death see Pt IV (arts 26-37) (as amended).

4 Ibid art 5(1)(b). As to awards in respect of such persons see Pt V (arts 41-51) (as amended).

5 For the meaning of 'war service injury' see PARA 601 note 5 ante.

6 Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 5(1)(c). For the meaning of 'civil defence volunteer' see PARA 601 note 5 ante.

7 See ibid art 5(1). As to the period of the emergency see PARA 601 note 2 ante.

8 Nothing in this provision precludes the making of an award in respect of a war service injury sustained by a civil defence volunteer or a war injury sustained: (1) by a person ordinarily resident in the United Kingdom while travelling by sea or by air from or to any place therein to or from any other such place or any place in the Irish Republic or the Isle of Man; (2) outside the United Kingdom and the Isle of Man by an overseas volunteer in the course of a journey which he made for the purpose of undertaking a war occupation or in the course of a journey which he made for the purpose of leaving any place to which he had made any such journey, or for the purpose of leaving any country in which he had carried on a war occupation, being a journey made at the expense of public funds; (3) by an overseas volunteer ordinarily resident in the Irish Republic in the course of a journey which he made from or to that Republic to or from the United Kingdom if he made the journey while he was on leave or holiday from a war occupation in which he was engaged, or the journey was the first journey to the Republic that he had made since he was last engaged in a war occupation; (4) in enemy territory or in territory which was, at the material date (ie the date of the injury: see ibid art 2(14)), occupied by the enemy (a) by a British subject who was born in the United Kingdom or by the wife of such a subject or by a woman who was born in the United Kingdom and would have been such a subject but for her marriage to a person not of British nationality; (b) by a person whose death occurred as the direct result of the injury, if the claimant is either his widow or widower who was born in the United Kingdom and is a British subject or but for her marriage to the deceased person would be a British subject or, where that widow or widower has also died, is his dependent child (but an award under this head is discretionary and may not be made unless the person to whom or for whose benefit it may be made is residing in the United Kingdom): art 60(3) (amended by SI 2002/672). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 60(3)(e) (ii) (as amended) (see head (b) supra) is further amended so as to refer also to civil partners: see art 60(3)(e)(ii) (as so amended; and prospectively amended by SI 2005/3031). Note that the term 'British subject' is now used for a very limited class of persons (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 9, 66 et seq). As to British citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq. 'Overseas volunteer' means a person ordinarily resident outside the United Kingdom who had, in accordance with arrangements made by or on behalf of the government in the United Kingdom, volunteered or been required to undertake a war occupation; and 'war occupation', in relation to such a person, means service as a member of the armed forces of the Crown raised or established in the United Kingdom, work which might be selected for that volunteer by or on behalf of the government, or any other work which the Secretary of State (see note 11 infra) considers it was in the national interest for the volunteer to perform during the period of the emergency: Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 60(4). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

- 9 For the meaning of 'qualifying injury' see PARA 601 note 4 ante.
- 10 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 60(1), (2).
- 11 As to the Secretary of State for these purposes see PARAS 625-627 post.
- 12 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 6.
- 13 Ibid art 61.
- 14 See ibid art 59; and ARMED FORCES vol 2(2) (Reissue) PARA 127 et seq.
- 15 For these purposes, 'student' means a person who is receiving full-time instruction at a university, college, secondary school or technical school, or at any other establishment which, in the opinion of the Secretary of State, is a comparable educational establishment; and a person may continue to be a student for such period, not exceeding 13 weeks, after he ceases to receive full-time instruction and before he attains the age of 19 as the Secretary of State may in any particular case determine: ibid art 2(21). 'Apprentice' means a person undergoing full-time training for any trade, business, profession, office, employment or vocation, and receiving not more than nominal wages: art 2(4).
- 16 See ibid art 7(1), (2).
- 17 Ie under ibid Pt III (arts 8-25B) (as amended): see PARA 606 post.
- 18 See ibid art 7(3).
- 19 See ibid art 71(1B) (added by SI 2005/655). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 71(1B) (as added) is amended so as to refer also to civil partners: see art 71(1B) (as so added; and prospectively amended by SI 2005/3031).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(ii) Civilian Injuries/604. Relief from liability to pay damages etc.

604. Relief from liability to pay damages etc.

Where, during the period of the emergency¹, any person sustained a war injury² or a civil defence volunteer sustained a war service injury³, his right to damages or compensation in respect of that injury, whether by virtue of any statute or contract or at common law, was removed⁴ and the only recompense available to him was that now conferred by the civilian injuries scheme⁵. The broad effect was that, in the case of war injuries, all rights to sue in tort or for breach of contract or to claim under any other enactment were taken away where the injury in question was a war injury and the cause of action was based on some negligence, nuisance or breach of duty⁶. Having regard to this, 'war injury' and 'war service injury' were narrowly interpreted by the courts so that the fundamental right of the subject of coming to the Queen's courts for redress of wrongs was not treated as taken away except by quite clear language⁷. Thus where a local authority had taken over an underground station for use as an air-raid shelter and damage was caused by reason of the steps being defective, the plaintiff was entitled to recover damages in negligence⁸.

The civilian injuries scheme makes provision for the prevention of double payments where any compensation has been granted in respect of a war injury under certain other enactments⁹.

- 1 As to the period of the emergency see PARA 601 note 2 ante.
- 2 For the meaning of 'war injury' see PARA 600 ante.
- 3 For the meaning of 'war service injury' see PARA 601 note 5 ante.

- 4 See the Personal Injuries (Emergency Provisions) Act 1939 s 3 (repealed).
- 5 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended), which superseded earlier schemes made under the like power.
- 6 *Billings v Reed* [1945] KB 11 at 15, [1944] 2 All ER 415 at 418, CA.
- 7 *Adams v Naylor* [1944] KB 750 at 759, [1944] 2 All ER 21 at 27, CA, per Scott LJ (dissenting); on appeal [1946] AC 543, [1946] 2 All ER 241, HL.
- 8 *Baker v Bethnal Green Corp* [1945] 1 All ER 135, CA.
- 9 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 62.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(ii) Civilian Injuries/605. Burden of proof.

605. Burden of proof.

A claim in respect of disablement had to be made within three months of the date on which the qualifying injury¹ which caused it was sustained or the date on which the claimant subsequently became entitled to an award by reason of attaining the age of 15 or ceasing to give whole-time service as a member of the armed forces, whichever was the latest². In any such claim there is no onus on the claimant to prove that disablement was caused by the qualifying injury³. A similar dispensation with regard to the burden of proof existed with regard to claims made in respect of a death⁴ which occurred within seven years of the date on which the qualifying injury was sustained⁵. However, where death occurs more than seven years after the date of the qualifying injury, the onus of proving that it was the direct result of that injury is not removed, but the claimant must still be given the benefit of any reasonable doubt⁶.

- 1 For the meaning of 'qualifying injury' see PARA 601 note 4 ante.
- 2 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 54(1), (2) (art 54(1) amended by SI 1986/628; and prospectively amended by SI 2005/3031).
- 3 Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 5(2).
- 4 Claims in respect of death must be made within three months of the date of death: see *ibid* art 54(3) (amended by SI 1987/191; SI 2002/672).
- 5 Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 5(2).
- 6 See *ibid* art 5(3). The onus is on the claimant to produce evidence in support of the claim, and, if he can show that there is reasonable doubt as to whether or not his disablement was caused by the qualifying injury, the benefit of that doubt must, by art 5(3), be given to the claimant: *Cadney v Minister of Pensions and National Insurance* [1965] 3 All ER 809, [1966] 1 WLR 80 per Edmund Davies J, following *Dickinson v Minister of Pensions* [1953] 1 QB 228, [1952] 2 All ER 1031 per Ormerod J.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(ii) Civilian Injuries/606. Awards in respect of disablement.

606. Awards in respect of disablement.

Awards may be made in respect of disablement provided that the disablement is serious and prolonged¹. However, no pension may be awarded unless the resulting degree of disablement is 20 per cent or more², but, where it is less than 20 per cent and the Secretary of State³ is satisfied, having regard to the nature of the disablement, that the payment of a lump sum would be appropriate, such a sum as the Secretary of State deems fit may be awarded⁴. 'Disablement' for this purpose means physical or mental injury or damage, or loss of physical or mental capacity caused by that injury⁵.

An assessment for the purposes of the civilian injuries scheme must be made in the same way as an assessment of the degree of disablement of a member of the armed forces for the purposes of the service pensions order⁶.

The basic rates of pension payable under the civilian injuries scheme may be altered from time to time⁷. In addition to the basic rate, the following allowances may be payable if the appropriate conditions are satisfied: a constant attendance allowance⁸; an exceptionally severe disablement allowance⁹; a severe disablement occupational allowance¹⁰; an allowance for wear and tear of clothing where an artificial limb is worn¹¹; an unemployability allowance¹²; an invalidity allowance¹³; a comforts allowance¹⁴; an allowance for lowered standard of occupation¹⁵; an age allowance where the injured person is aged 65 or more¹⁶; treatment allowances¹⁷; an allowance in respect of prolonged abstention from work¹⁸; an allowance for part-time treatment¹⁹; a mobility supplement²⁰; and payment of medical expenses, including rehabilitative treatment²¹.

1 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 8(1) proviso, 41(1) proviso. As to the civilian injuries scheme see PARA 601 ante.

2 See *ibid* arts 9(1), 41(3). An award may be made provisionally or upon any other basis: see art 9(1). Neither noise-induced sensorineural hearing loss nor a related condition or symptom may be taken into account in determining a person's degree of disablement if that loss alone is less than 20%: art 10(2B) (added by SI 1992/3226). 'Noise-induced sensorineural hearing loss' means damage to the cochlear hair cells of the inner ear which is caused by the exposure of the cochlea to noise; and a condition or symptom is to be treated as related to such hearing loss if it is another condition, or a symptom, which is the consequence of damage to the cochlear hair cells of the inner ear which is caused by the exposure of the cochlea to noise: Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(14A) (added by SI 1992/3226).

3 As to the Secretary of State for these purposes see PARAS 625-627 post.

4 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 72 (amended by SI 1992/3226). No such sum is, however, payable in relation to noise-induced sensorineural hearing loss or a related condition or symptom if it is accompanied by noise-induced sensorineural hearing loss: Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 72A (added by SI 1992/3226).

5 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 8(2), 41(4). 'Physical injury' includes tuberculosis and any other organic disease, and the aggravation thereof: art 2(18).

6 See *ibid* arts 10, 42, Sch 2. As to the service pensions order see PARA 595 et seq ante.

7 See *ibid* art 11, Sch 3 (substituted by SI 2005/655; and amended by SI 2005/3031).

8 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 14, 43 (art 14 substituted by SI 2001/420).

9 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 15, 44 (art 15 amended by SI 2001/420).

10 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 16 (amended by SI 1984/1675; SI 2001/420). There is, however, no such provision in respect of persons not gainfully occupied. For the meaning of 'gainfully occupied person' see PARA 601 note 4 ante.

11 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 17, 46 (art 17 substituted by SI 1997/812).

12 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 18 (amended by SI 1985/1313; SI 1992/702; SI 1995/502; SI 1997/812; SI 2001/420; SI 2002/672; and prospectively amended by SI 2005/3031). There is, however, no such provision in respect of persons not gainfully occupied.

13 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 19 (amended by SI 2001/420; SI 2002/672). There is, however, no such provision in respect of persons not gainfully occupied.

14 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 20, 45.

15 See *ibid* art 21 (amended by SI 1985/1313; SI 1997/812; SI 2001/420). There is, however, no such provision in respect of persons not gainfully occupied.

16 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 22, 47.

17 See *ibid* art 23 (amended by SI 1986/628; SI 1992/702; SI 1993/480; SI 2001/420); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 48 (amended by SI 1986/628). As to the refusal of treatment see PARA 623 post.

18 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 24 (amended by SI 1993/480). There is, however, no such provision in respect of persons not gainfully occupied.

19 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 25 (amended by SI 1993/480). There is, however, no such provision in respect of persons not gainfully occupied.

20 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 25A (added by SI 1983/1164; and amended by SI 1983/1540; SI 1986/628; SI 1990/1300; SI 1991/708; SI 1992/702; SI 1995/445; SI 1997/812; SI 2001/420); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 48A (added by SI 1984/1289).

21 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 25B (added by SI 1984/1289; and amended by SI 1999/262); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 48B (added by SI 1984/1289).

UPDATE

606 Awards in respect of disablement

NOTE 6--SI 1983/686 Sch 2 amended: SI 2009/438.

NOTE 7--SI 1983/686 Sch 3 further substituted: SI 2007/646, SI 2008/592, SI 2009/438.

NOTE 12--SI 1983/686 art 18 further amended: SI 2005/3031, SI 2006/765, SI 2007/646.

NOTE 14--SI 1983/686 art 20 amended: SI 2009/438.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(ii) Civilian Injuries/607. Awards in respect of death.

607. Awards in respect of death.

An award in respect of death may be made under the civilian injuries scheme¹ where the death is the direct result of a war injury² or, in the case of a civil defence volunteer³, a war service injury⁴.

Awards in respect of the death of gainfully occupied persons⁵ or civil defence volunteers may be made as follows: widows' or widower's pensions⁶; rent allowances to surviving spouses⁷ with children⁸; allowances to elderly surviving spouses⁹; pensions to unmarried dependants who lived as spouses¹⁰; temporary allowances to widows or widowers and unmarried dependants who lived as wives of severely disabled persons¹¹; allowances in respect of children under the age of 15¹²; pensions to motherless or fatherless children under that age¹³; awards to or in

respect of children over the age of 15¹⁴; and awards to or in respect of ineligible children of unemployable pensioners¹⁵.

In the case of the death of a person who was not gainfully occupied, a pension based on pecuniary need may be awarded to a widow, a dependent widower or, where there is no widow or dependent widower, a dependent child¹⁶ or, if there is no dependent child and, in the exceptional circumstances of any case, the Secretary of State so directs, to a parent of the deceased to whose support the deceased had regularly contributed throughout the six-month period¹⁷ expiring on the date of his death¹⁸. However, no such pension may be awarded unless the claimant is in pecuniary need because, by reason of the deceased's death, a pension, superannuation allowance, annuity or other income of which he was previously in receipt is no longer available to support the claimant¹⁹. Allowances to elderly surviving spouses²⁰ and temporary allowances to widows or widowers of severely disabled persons are also payable²¹.

In determining whether a pension is payable to a person as a widow under the scheme in respect of any period beginning on or after 19 July 1995, no account may be taken of the fact that the widow has married another if, before the beginning of that period, the marriage has been terminated or the parties have been judicially separated²².

1 le the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended).

2 For the meaning of 'war injury' see PARA 600 ante.

3 For the meaning of 'civil defence volunteer' see PARA 601 note 5 ante.

4 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, arts 26, 49 (amended by SI 2002/672; and prospectively amended by SI 2005/3031). The Secretary of State may defray so much of any reasonable funeral expenses as he may determine: Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 26A (added by SI 1997/812; and amended by SI 2001/420; SI 2004/717); Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 49A (added by SI 1997/812; and amended by SI 2001/420); and see ARMED FORCES vol 2(2) (Reissue) PARA 287. For the meaning of 'war service injury' see PARA 601 note 5 ante. As to the Secretary of State for these purposes see PARAS 625-627 post.

5 For the meaning of 'gainfully occupied person' see PARA 601 note 4 ante.

6 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 27 (amended by SI 1994/2021; SI 2002/672). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 27 (as amended) is further amended so as to refer also to civil partners: see art 27 (as so amended; and prospectively amended by SI 2005/3031).

7 'Surviving spouse' means the widow or, as the case may be, the dependent widower of a person referred to in the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 5(1)(a)-(c) (see PARA 603 ante): art 2(21A) (art 2(21A), (21B) added by SI 1984/1289). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(21A) (as added) is amended so as to refer to a widower rather than a dependent widower: see art 2(21A) (as so added; and prospectively amended by SI 2005/3031).

8 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 28 (amended by SI 1984/1289; SI 1989/415; SI 1993/480). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 28 (as amended) is further amended so as to refer to a surviving spouse or surviving civil partner: see art 28 (as so amended; and prospectively amended by SI 2005/3031).

9 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 29 (substituted by SI 1984/1289). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 29 (as substituted) is amended so as to refer to a surviving spouse or surviving civil partner: see art 29 (as so substituted; and prospectively amended by SI 2005/3031).

10 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 30 (amended by SI 1984/1289). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 30 (as amended) is further amended so as to refer to dependants who lived as spouses or dependants who lived as civil partners, rather than unmarried dependants who lived as spouses: see art 30 (as so amended; and prospectively amended by SI 2005/3031). In relation to a person who has sustained a qualifying injury, 'unmarried dependant who lived as a spouse' means, where the injured person is dead, a person of the opposite sex who was wholly or substantially maintained by the injured person on a permanent bona fide domestic basis continuously throughout the period beginning six months before the material date (ie the date of the injury: see the Personal

Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(14)) and ending with the date of the injured person's death: see art 2(21B)(b) (as added: see note 7 supra). As from 5 December 2005, art 2(21B) (as added) is repealed by SI 2005/3031.

11 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 31 (amended by SI 1983/1540; SI 2002/672). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 31 (as amended) is further amended so as to refer to surviving spouses, surviving civil partners, dependants who lived as spouses and dependants who lived as civil partners, rather than widows, widowers and unmarried dependants who lived as spouses: see art 31 (as so amended; and prospectively amended by SI 2005/3031). 'Unmarried dependant who lived as a wife' means, where the injured person is dead, a female person who was wholly or substantially maintained by him on a permanent bona fide domestic basis continuously throughout the period beginning six months before the material date and ending with the date of his death: see the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(22)(b). As from 5 December 2005, art 2(22) is repealed by SI 2005/3031.

12 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 33 (substituted by SI 2001/420; and amended by SI 2002/672).

13 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 34 (substituted by SI 2001/420; and amended by SI 2002/672).

14 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 35 (substituted by SI 2001/420; and amended by SI 2002/672).

15 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 37 (substituted by SI 1984/1289).

16 'Dependent child', in relation to a person who has sustained a qualifying injury, means a child with respect to whom that person: (1) is in law the mother or father of the child, including by adoption; (2) is the child's step parent; or (3) is the child's foster parent within the meaning of the Children Act 1989 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 609) and the injured person: (a) is regularly maintaining him or contributing to his maintenance, or could reasonably be expected to do so; (b) where the injured person has died, was regularly maintaining him or contributing to his maintenance up to the date of his death or could reasonably have been expected to do so; or (c) where the child was unborn at the date of the death of the injured person, would have so maintained him or contributed to his maintenance: see the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 2(7) (substituted by SI 2001/420).

17 Ie or such other period as the Secretary of State may determine.

18 Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 49(1) (s 49 amended by SI 2002/672). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 49(1) (as amended) is further amended so as to refer to surviving spouses or surviving civil partners, rather than widows or widowers: see art 49(1) (as so amended; and prospectively amended by SI 2005/3031).

19 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 49(2) (as amended: see note 18 supra).

20 See *ibid* art 50 (substituted by SI 1984/1289). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 50 (as substituted) is amended so as to refer also to surviving civil partners: see art 50 (as so substituted; and prospectively amended by SI 2005/3031).

21 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 51 (amended by SI 2002/672). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 51 (as amended) is further amended so as to refer to surviving spouses or surviving civil partners, rather than widows or widowers: see art 51 (as so amended; and prospectively amended by SI 2005/3031).

22 Pensions Act 1995 s 168(1), (3)(b). For the meanings of 'termination of a marriage' and 'judicial separation' for these purposes see PARA 596 note 16 ante.

UPDATE

607 Awards in respect of death

NOTE 4--Amendments made by SI 2005/3031 in force 5 December 2005. SI 1983/686 art 26A substituted: SI 2009/438.

TEXT AND NOTE 22--Pensions Act 1995 s 168(1), (1A) substituted, for s 168(1) as originally enacted: Pensions Act 2008 s 138(2).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(ii) Civilian Injuries/608. Payment of pensions.

608. Payment of pensions.

Payment of a pension under the civilian injuries scheme¹ may be made provisionally or upon any other basis². Pension may be paid weekly in advance³ but the Secretary of State⁴ may in any particular case or class of case determine that pension is to be paid in advance or in arrears or partly in advance and partly in arrears, and for a period different from that specified⁵ by the scheme⁶.

Pension is to be paid by such means as appear to the Secretary of State to be appropriate in the circumstances of the case or class of case⁷. He may direct in relation to any particular case or class of case that a pension is to be paid by way of automated or other direct credit transfer into a bank or other account in the name of a person entitled to the pension or a person acting on his behalf, or in the joint names of the person entitled to the pension and his spouse, or the person entitled to the pension and a person acting on his behalf⁸. Pension so paid must be paid for periods of four weeks, or for such other periods as the Secretary of State may in any particular case or class of case determine and within seven days of the last day of each successive period so determined⁹. It may be paid in advance, or in arrears, or partly in advance and partly in arrears, as the Secretary of State may in any particular case or class of case determine¹⁰. Payment of pension by direct credit transfer may be terminated by the Secretary of State if the arrangements seem to him to be no longer appropriate to that case or class of case¹¹.

1 Ie the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended): see PARA 601 et seq ante.

2 Ibid art 75(1A) (art 75(1A)-(1D) added by SI 1988/2260).

3 Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 75(1B) (as added: see note 2 supra).

4 As to the Secretary of State for these purposes see PARAS 625-627 post.

5 Ie specified in the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 75(1B) (as added): see the text and note 3 supra.

6 Ibid art 75(1C) (as added: see note 2 supra).

7 Ibid art 75(1D) (as added: see note 2 supra). Amounts of pension including a fraction of a pence must be rounded up and other allowances and benefits rounded to the nearest pence: see art 75(2). Where, by reason of any provision in any instrument amending a provision of the scheme, a change falls to be made in the rate of any pension which is payable weekly, and the date on which that change would otherwise fall (the 'prescribed date') is not the day of the week on which payment of pension is normally made (the 'weekly pay day'), the change has effect only as from the first weekly pay day immediately following the prescribed date: art 75(3) (added by SI 1984/1289; and amended by SI 1988/2260).

8 Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 74A(1) (art 74A added by SI 1988/2260). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 74A(1) (as added) is amended so as to refer to a spouse or civil partner: see art 74A(1) (as so added; and prospectively amended by SI 2005/3031).

9 Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 74A(2)(a), (b) (as added: see note 8 supra).

10 Ibid art 74A(2)(c) (as added: see note 8 supra). Where pension is payable in accordance with art 74A (as added), the Secretary of State may make a particular payment by credit transfer otherwise than as provided by

art 74A(2) (as added) if it appears to him to be appropriate to do so for the purpose of paying any arrears of pension, or making a payment of pension at the termination of an award: art 74A(3) (as so added).

11 Ibid art 74A(4) (as added: see note 8 supra).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(iii) Schemes for the Mercantile Marine and Other Seafarers/609. Power to make awards to mariners in respect of war injuries and detention.

(iii) Schemes for the Mercantile Marine and Other Seafarers

609. Power to make awards to mariners in respect of war injuries and detention.

With the consent of the Treasury, the Secretary of State¹ may make a scheme for:

- 234 (1) applying the provisions of any Naval War Pensions Order² to persons in cases where their death or disablement is directly attributable to their having sustained war injuries³, or suffered detention⁴, by reason of their service as mariners in British ships⁵;
- 235 (2) the payment of allowances to or for the benefit of persons who have suffered such detention or to or for the benefit of their dependants⁶.

The cases in which a person who has sustained an injury⁷, or suffered detention, is to be treated as having done so by reason of his service in a British ship as a mariner are where the injury, or the capture on which his detention was consequent, as the case may be, occurred:

- 236 (a) while he was in the service of a British ship as a mariner;
- 237 (b) in the case of a person normally employed as a mariner, while he was in the service of a seagoing British ship in the British Islands⁸ in which he was employed as a master or a member of its crew, notwithstanding that he was not employed in seagoing service in the ship;
- 238 (c) while he was at a place⁹ outside the British Islands on leave from a British ship in which he was employed as a mariner and which was at a port¹⁰ outside those islands;
- 239 (d) while he was at a place outside the British Islands in accordance with approved arrangements¹¹ for having persons available for employment as mariners;
- 240 (e) while he was at any place, except on land in the British Islands, in the course of proceeding to employment in a British ship as a mariner, or to a place to which he was going in accordance with such approved arrangements;
- 241 (f) while he was at any place, except as mentioned above, in the course of returning to any part of the British Islands, to the country to which he belonged, or to any other approved country¹² from employment in a British ship as a mariner or from a place at which he had been in accordance with such approved arrangements, and before he first arrived on land in that part of the British Islands or, as the case may be, in that country; or
- 242 (g) while he was waiting at any place outside the British Islands to proceed or return as mentioned above, whether the delay was due to sickness or to any other cause outside his control¹³.

If it appears to the Secretary of State that the awards that could be authorised by the provisions of a scheme made by virtue of head (1) above would, in the case of mariners of any particular class, be inappropriate to the conditions of their employment or engagement, he

may, with the consent of the Treasury and in lieu of making provision for the application in their case of a Naval War Pensions Order, make a scheme authorising in their case awards on account of the like matters as if the scheme were made under those provisions, but of such amount and character as may be determined by or under the scheme¹⁴.

A scheme may also be made for compensating the persons to whom these provisions apply for war damage¹⁵ to their effects¹⁶.

A scheme made under these provisions may contain any such provisions as appear to the Secretary of State to be necessary or expedient for giving effect to its purpose, and in particular may make provision for the determination of questions with respect to its effect or operation and for empowering him to make regulations for giving effect to the purposes of the scheme¹⁷. It may be amended or revoked by a subsequent scheme or by an order made by the Secretary of State¹⁸. A scheme applying the provisions of a Naval War Pensions Order to mariners or other persons may apply the order subject to such additions and modifications as appear appropriate, having regard to the differences in the conditions of service of mariners and other persons and of officers and men of the naval forces of the Crown respectively or to other services, and subject to such conditions, limitations and exceptions as appear to the Secretary of State to be expedient¹⁹.

All sums to be paid in respect of a pension or other payment awarded by virtue of a scheme must be paid out of money provided by Parliament²⁰.

1 As to the Secretary of State for these purposes see PARAS 625-627 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 'Naval War Pensions Order' means an Order in Council whereby provision is made as respects officers and men of the naval forces of the Crown for the award of pensions or other payments on account of death or disablement attributable to service in those forces during war: Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 10. The power to make such Orders in Council is now exercisable under the Social Security (Miscellaneous Provisions) Act 1977 s 12: see PARA 595 et seq ante; and ARMED FORCES vol 2(2) (Reissue) PARA 273 et seq.

3 For the meaning of 'war injury' see PARA 600 ante.

4 'Detention', in relation to a mariner or other person, means detention consequent on the capture of the mariner or other person or of his ship effected by reason of the existence of a state of war: Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 10. 'Capture' includes seizure, arrest or other restraint: s 10. 'Mariner', in relation to a ship, means the master or a member of the crew of the ship, being a person employed or engaged in seagoing service in that ship, and not being a member of the naval forces of the Crown or a person to whom the provisions of ss 4, 5 (as amended) (see PARAS 610-611 post) apply: s 10 (definition amended by the Pensions (Mercantile Marine) Act 1942 s 6, Schedule). 'Ship' has the same meaning as in the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 229): Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 10 (definition added by the Pensions (Mercantile Marine) Act 1942 Schedule; and amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 19(b)).

5 'British ship' does not include a ship forming part of the Royal Navy, but includes a ship not forming part of that navy which belongs to the Crown or is held by any person on behalf of or for the benefit of the Crown: see the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 10 (definition amended by the Pensions (Mercantile Marine) Act 1942 Schedule; and by the Armed Forces Act 1981 s 28(2), Sch 5 Pt I). References in the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 3 (as amended) and s 6(1)(a) (as amended) (see head (1) in the text; and the text and notes 6-16 infra) to British ships are to be construed, in relation to injuries, detention, loss or damage sustained or suffered by British subjects and British protected persons, as including references to other ships chartered on behalf of the Crown; and a scheme thereunder may make provision, as respects such cases as may be specified by or under the scheme, for treating the service or employment of British subjects and British protected persons as mariners in ships which are not British ships or such other ships as mentioned above as if it were service or employment in British ships: see the Pensions (Mercantile Marine) Act 1942 s 10(3). Note that the term 'British subject' is now used for a very limited class of persons (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 9, 66 et seq). As to British protected persons see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 10. As to British citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 23 et seq.

6 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 3(1) (s 3(1), (2) substituted by the Pensions (Mercantile Marine) Act 1942 s 2(1); and amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)). See the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058 (as amended); and PARA 612 et seq post.

7 In addition to war injuries within the statutory definition (see PARA 600 ante), these provisions also apply in relation to physical injuries sustained on or after 3 September 1939, at sea or in any other tidal water or in the waters of any harbour and attributable to: (1) the taking of measures with a view to avoiding, preventing or hindering enemy action against ships, or as a precaution in anticipation of enemy action against ships, or for rescue or salvage purposes in consequence of enemy action against ships; (2) the absence, by reason of circumstances connected with any war in which the Crown may be engaged, of any aid to navigation for ships, or of any warning of danger to ships, being an aid or warning which would be normal in time of peace; (3) the carriage, by reason of circumstances connected with any such war, of any cargo in a manner which would be abnormal in time of peace and involves danger to the ship in which the cargo is carried or to her crew; or (4) the existence on board ship of any other conditions arising out of any such war which would be abnormal in time of peace: see the Pensions (Mercantile Marine) Act 1942 s 1(1), (2)(a)-(d) (s 1(1) amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)). These injuries are referred to as 'war risk injuries' in the appropriate pension schemes: see PARA 600 heads (a)-(d) ante. In relation to injuries sustained in the waters of a harbour, the measures specified in head (1) supra do not include the prohibition or restriction of lights other than navigational lights; and an injury is treated as being attributable to the matters specified in heads (1)-(4) supra if, but only if, they substantially increased the risk of the peril occurring which caused the injury, loss or damage: see the Pensions (Mercantile Marine) Act 1942 s 1(2), (3). For these purposes, 'navigational light' means a light displayed, whether on a ship or otherwise, as an aid to navigation for ships or as a warning of danger to ships: s 1(4). 'Physical injury' includes tuberculosis and any other organic disease and the aggravation thereof: s 5. 'Harbour' means any harbour, whether natural or artificial, and any port, dock, haven, estuary, tidal or other river, canal or inland navigation to which seagoing ships have access; and 'tidal water' means any part of the sea, and any part of a river within the ebb and flow of the tide at ordinary spring tides, not being a harbour: s 10(2). For the meaning of 'salvage' see PARA 610 note 8 post.

8 For these purposes, 'British Islands' means Great Britain, Northern Ireland, the Channel Islands and the Isle of Man: Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 10.

9 'Place' includes any point on land, in the air, or on or in the water: *ibid* s 10 (definition added by the Pensions (Mercantile Marine) Act 1942 s 6, Schedule).

10 'Port' includes any dock, harbour, pier, quay, wharf, mooring, anchorage or similar place: Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 10 (definition substituted by the Pensions (Mercantile Marine) Act 1942 s 6, Schedule).

11 The arrangements made or approved by or on behalf of the Minister of War Transport or by the Secretary of State: see the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 3(2)(d) (as substituted and amended: see note 6 supra). As to the dissolution of the Ministry of War Transport see the Ministry of War Transport (Dissolution) Order 1946, SR & O 1946/375.

12 The approved by or on behalf of the Minister of War Transport or by the Secretary of State: see the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 3(2)(f) (as substituted and amended: see note 6 supra).

13 *Ibid* s 3(2) (as substituted and amended: see note 6 supra).

14 *Ibid* s 3(3) (amended by the Pensions (Mercantile Marine) Act 1942 s 6, Schedule; and by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)).

15 For the meaning of 'war damage' see PARA 600 ante.

16 See the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 6(1)(a) (substituted by the Pensions (Mercantile Marine) Act 1942 s 2(2)). 'Effects', in relation to any person, means any property carried on his person or in the ship in which he is serving or in the ship or other conveyance in which he is travelling, or otherwise accompanying him, at the time when the war damage in question occurs: Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 6(4). A scheme so made may fix the maximum amount payable under it in different circumstances specified in the scheme: s 6(2). As to the scheme that was made for compensation for war damage to seamen's effects see the Merchant Shipping (Compensation to Seamen--War Damage to Effects) Scheme 1982, SI 1982/1023 (revoked); and TRADE AND INDUSTRY vol 97 (2010) PARA 802.

17 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 7(1) (s 7 amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)). A scheme may provide that it is to come into operation, or is to be deemed to have come into operation, on such date as may be specified in it,

whether before or after the commencement of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939: see s 7(2); and the Pensions (Mercantile Marine) Act 1942 s 8.

18 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 7(3) (as amended: see note 17 supra).

19 Ibid s 7(5) (as amended (see note 17 supra); and further amended by the Pensions (Mercantile Marine) Act 1942 s 6, Schedule).

20 See the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 7(6); and the Pensions (Mercantile Marine) Act 1942 s 9.

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610. Power to make awards to pilots etc.

With the consent of the Treasury, the Secretary of State¹ may make a scheme for applying the provisions of any Naval War Pensions Order² to:

- 243 (1) pilots and apprentice pilots³;
- 244 (2) masters and members of the crew of pilot boats⁴, lightships⁵, lighthouse tenders⁶ and lightship tenders⁷; and
- 245 (3) any person other than a member of the naval forces of the Crown who, not being the master or a member of the crew of a ship, is regularly employed in salvage⁸ operations in or from the British Islands,

in cases where their death or disablement is directly attributable to their having sustained war injuries⁹, or suffered detention¹⁰, by reason of their service¹¹. He may also make a scheme, with the like consent, for the payment of allowances to or for the benefit of any such persons who have suffered such detention or to or for the benefit of their dependants¹².

For these purposes, a person is deemed to have sustained a war injury, or to have been detained, by reason of his service, if he sustained the injury, or if the capture¹³ in consequence of which the detention occurs is effected:

- 246 (a) in the case of a master or member of the crew of a pilot boat, lighthouse tender or lightship tender, while he is in the service of the boat or tender or is at any place¹⁴, except on land in the British Islands, in the course of proceeding to the boat or tender for the purpose of being in its service, or of returning from the boat or tender after being in its service¹⁵;
- 247 (b) in the case of a pilot or apprentice pilot, at any time during a period while he was on a seagoing ship, if during some part of that period he was acting or was due to act as pilot or apprentice pilot, or while he was on board a pilot boat, or while he was at any place, except on land in the British Islands, while proceeding to or returning from a seagoing ship in which he was due to act, or had acted, as pilot or apprentice pilot, or to or from a pilot boat¹⁶;
- 248 (c) in the case of a master or member of the crew of a lightship, while he is in the service of the lightship or is at any place, except on land in the British Islands, in the course of proceeding to the lightship for the purpose of being in its service or of returning from the lightship after being in its service¹⁷;
- 249 (d) in the case of a salvage worker, while he was engaged in salvage operations taking place either at sea or in any tidal water or harbour¹⁸ outside the British Islands, or while he was on leave at a place outside those islands during the

carrying on of such salvage operations in which he was engaged, or while he was at any place, except on land in those islands, in the course of proceeding to or returning from engagement in such salvage operations or while he was waiting at any place outside those islands to proceed or return to or from such engagement (whether the delay was due to sickness or to any other cause outside his control)¹⁹.

A scheme may also be made for compensating the persons to whom these provisions apply for war damage²⁰ to their effects²¹.

A scheme made under these provisions may contain any such provisions as appear to the Secretary of State to be necessary or expedient for giving effect to its purpose, and in particular may make provision for the determination of questions with respect to its effect or operation and for empowering him to make regulations for giving effect to the purposes of the scheme²². It may be amended or revoked by a subsequent scheme or by an order made by the Secretary of State²³.

1 As to the Secretary of State for these purposes see PARAS 625-627 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 See PARA 609 note 2 ante.

3 The persons to whom these provisions apply as being pilots and apprentice pilots are any pilot, and any person, whether an apprentice or not, training as a pilot, whose normal occupation as such is carried on in or from the British Islands and is that of acting as pilot or apprentice pilot in ships at sea or ships proceeding to or from sea from or to ports or pilotage districts in those islands which are at sea at some time while he is so acting; and 'apprentice pilot' includes any person training as a pilot: Pensions (Mercantile Marine) Act 1942 s 3(1). For the meaning of 'British Islands' see PARA 609 note 8 ante.

4 For these purposes, 'pilot boat' has the meaning assigned to it by the Pilotage Act 1987 s 6 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 569, 574), except that it includes any vessel which for the time being is being used in the pilotage service of any pilotage district in the British Islands: Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 4(4) (definition amended by the Pensions (Mercantile Marine) Act 1942 s 6, Schedule; and by the Pilotage Act 1987 s 32(4), Sch 2 para 1).

5 'Lightship' means a lightship belonging to a local or general lighthouse authority within the meaning of the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068): Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 4(4) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 19(a)).

6 'Lighthouse tender' means a tender belong to any such authority as is mentioned in note 5 supra: Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 4(4).

7 'Lightship tender' means a tender to a lightship: *ibid* s 4(4).

8 'Salvage' means the preservation or recovery of vessels wrecked, stranded or in distress, or their cargo or apparel, or the recovery of any other property from the water; and includes the removal of wrecks; and 'salvage operations' and 'salvage purposes' are to be construed accordingly: Pensions (Mercantile Marine) Act 1942 s 10(2).

9 For the meaning of 'war injury' see PARA 600 ante.

10 For the meaning of 'detention' see PARA 609 note 4 ante.

11 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 4(1)(a), (2) (amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)); Pensions (Mercantile Marine) Act 1942 s 4(1), (2). In relation to such a salvage worker as is mentioned in head (3) in the text, or to the master or a member of the crew of a ship regularly employed, or chartered for the purpose of being employed, in salvage operations, the reference in s 1(2)(a) (see PARA 609 note 7 ante) to measures taken for salvage purposes does not apply: s 4(4).

12 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 4(1)(b), (2); Pensions (Mercantile Marine) Act 1942 s 4(1), (2). See the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058 (as amended); and PARA 612 et seq post.

- 13 For the meaning of 'capture' see PARA 609 note 4 ante.
- 14 For the meaning of 'place' see PARA 609 note 9 ante.
- 15 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 4(3)(b).
- 16 Pensions (Mercantile Marine) Act 1942 s 3(2).
- 17 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 4(3)(c).
- 18 For the meanings of 'tidal water' and 'harbour' see PARA 609 note 7 ante.
- 19 Pensions (Mercantile Marine) Act 1942 s 4(1)(a)-(d).
- 20 For the meaning of 'war damage' see PARA 600 ante.
- 21 See the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 6(1)(b); and the Pensions (Mercantile Marine) Act 1942 ss 3(3), 4(3). For the meaning of 'effects' see PARA 609 note 16 ante. At the date at which this volume states the law, no such scheme was in force for these purposes.
- 22 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 7(1) (s 7 amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)).
- 23 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 7(3) (as amended: see note 22 supra). See further s 7(2), (5) (as amended); the Pensions (Mercantile Marine) Act 1942 s 8; and PARA 609 ante.

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611. Power to make awards to certain persons serving on naval ships.

With the consent of the Treasury, the Secretary of State¹ may make a scheme for:

- 250 (1) applying the provisions of any Naval War Pensions Order² to persons employed or engaged on ships³ forming part of the Royal Navy, being persons to whom the provisions of the order would not otherwise apply, in cases where their death or disablement is directly attributable to war injuries⁴ sustained in such circumstances as may be specified in the scheme, or to detention⁵ caused by reason of their service in such ships⁶; and
- 251 (2) the payment of allowances to or for the benefit of any such persons so detained, or to or for the benefit of their dependants⁷.

If it appears to the Secretary of State that the awards that could be authorised by the provisions of a scheme made by virtue of head (1) above would, in the case of any such persons of any particular class, be inappropriate to the conditions of their employment or engagement, he may, with the consent of the Treasury and in lieu of making provision for the application in their case of a Naval War Pensions Order, make a scheme authorising in their case awards on account of the like matters as if the scheme were made under those provisions, but of such amount and character as may be determined by or under the scheme⁸.

A scheme may also be made for compensating the persons to whom these provisions apply for war damage⁹ to their effects¹⁰.

A scheme made under these provisions may contain any such provisions as appear to the Secretary of State to be necessary or expedient for giving effect to its purpose, and in particular may make provision for the determination of questions with respect to its effect or

operation and for empowering him to make regulations for giving effect to the purposes of the scheme¹¹. It may be amended or revoked by a subsequent scheme or by an order made by the Secretary of State¹².

1 As to the Secretary of State for these purposes see PARAS 625-627 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 See PARA 609 note 2 ante.

3 For the meaning of 'ship' see PARA 609 note 4 ante.

4 For the meaning of 'war injury' see PARA 600 ante.

5 For the meaning of 'detention' see PARA 609 note 4 ante.

6 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 5(1)(a) (amended by the Armed Forces Act 1981 s 20(1), Sch 3 Pt II para 7; and by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)).

7 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 5(1)(b). See the War Pensions (Coastguards) Scheme 1944, SR & O 1944/500 (as amended); the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985 (as amended); and PARAS 599 ante, 614 post.

8 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 5(2) (amended by the Pensions (Mercantile Marine) Act 1942 s 6, Schedule; and by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)).

9 For the meaning of 'war damage' see PARA 600 ante.

10 See the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 6(1)(c). At the date at which this volume states the law, no such scheme was in force for these purposes.

11 Ibid s 7(1) (amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)).

12 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 7(3) (amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)). See further the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 7(2), (5) (as amended); the Pensions (Mercantile Marine) Act 1942 s 8; and PARA 609 ante.

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612. The mercantile marine scheme.

The War Pensions (Mercantile Marine) Scheme 1964¹ applies the service pensions order² with specified modifications³ to any person within one of the following descriptions whose disablement or death is directly attributable to a qualifying injury⁴ sustained, or to detention⁵ suffered, by reason of his service, that is to say, a member of the merchant navy or the sea fishing service⁶, the pilotage service or the light vessel service⁷, or a salvage worker⁸. All such persons are included in any references in the scheme to a 'mariner'⁹.

1 I.e. the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058 (amended by SI 1972/1434; SI 1978/1526; SI 1987/585; SI 1988/639; SI 1989/540; SI 1993/692; SI 1997/811; SI 2001/419; and prospectively amended by SI 2005/3033). The scheme was made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 ss 3, 4, 7 (as amended); see PARAS 609-610 ante.

2 le the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see PARA 595 et seq ante; and ARMED FORCES vol 2(2) (Reissue) PARA 273 et seq.

3 See the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, art 17, Sch 6; the Naval, Military and Air Forces etc (Modification of Enactments and other Instruments) Order 1978, SI 1978/1526, art 2, Schedule Pt II; and the Interpretation Act 1978 s 17(2).

4 'Qualifying injury' means a war injury or a war risk injury: War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, art 2(27). See also PARA 600 ante. As to the qualifying injuries covered by the scheme see Sch 2.

5 'Detention', in relation to any person, means detention which is consequent on the capture of that person or of his ship effected by reason of the existence of a state of war: *ibid* art 2(6). As to the detention covered by the scheme see Sch 2.

6 See *ibid* arts 2(13), (16), (18), 4.

7 See *ibid* arts 2(15), (17), 5.

8 See *ibid* arts 2(31), 6.

9 See the War Pensions (Mercantile Marine) (Amendment) Scheme 1988, SI 1988/639, art 5.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

612 The mercantile marine scheme

NOTE 1--Amendments made by SI 2005/3033 in force 5 December 2005. SI 1964/2058 further amended: SI 2008/2683.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(iii) Schemes for the Mercantile Marine and Other Seafarers/613. General effect of the mercantile marine scheme.

613. General effect of the mercantile marine scheme.

The war pension rights are very much less favourable for members of the merchant navy than for those of the armed forces¹. In the first place, members of the merchant navy and other persons covered by the scheme are not entitled to a pension unless their disablement or death is directly attributable to a qualifying injury² sustained or detention³ suffered which fulfils the required criteria⁴, whereas members of the armed forces have only to show that disablement or death is due to service⁵. There is thus no presumption, as there is for the purposes of the service pensions order⁶, that an injury which has led to a member's discharge or death during service which was not noted in a medical report on the commencement of his service must be accepted as due to service unless the contrary is proved⁷. In no case, however, is there an onus on a claimant under the mercantile marine scheme to prove that disablement or death is directly attributable to a qualifying injury or detention if the claim is made within seven years⁸; and where, upon reliable evidence, a reasonable doubt exists on that question, the benefit of the doubt must be given to the claimant irrespective of when the claim is made⁹. Where there

has been a previous disablement in respect of which a pension or grant is in payment out of public funds, otherwise than under the scheme, the assessment for the purposes of the scheme must be determined having regard to the previous disablement¹⁰.

In determining whether a pension is payable to a person as a widow under the scheme in respect of any period beginning on or after 19 July 1995, no account may be taken of the fact that the widow has married another if, before the beginning of that period, the marriage has been terminated or the parties have been judicially separated¹¹. This provision is in identical terms to that made for the purposes of the service pensions order¹².

Where, during the period of the emergency¹³, a member of the merchant navy suffered a war injury or a war risk injury, any right to damages or compensation in respect of that injury, whether by virtue of any statute or contract or at common law, was removed¹⁴ and the only recompense available to him was that now conferred by the War Pensions (Mercantile Marine) Scheme 1964¹⁵. Thus a seaman who was injured while dismantling a guy from an apparatus which increased the risk and which had been negligently fitted was not entitled to recover damages for the negligence¹⁶.

1 For a comparison of their respective rights see *Morris v Minister of Pensions* (1947) 1 WPAR 595 at 598 per Denning J.

2 For the meaning of 'qualifying injury' see PARA 612 note 4 ante.

3 For the meaning of 'detention' see PARA 612 note 5 ante.

4 See the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, arts 4-6, Sch 2.

5 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3 (as substituted); and PARA 596 ante. An injury will be 'due to service' if it is attributable to service: see *Horsfall v Minister of Pensions* (1944) 1 WPAR 7 (where an RAF officer collapsed and died after playing squash for his amusement, the death was not attributable to service; the nominated judge, Tucker J, stated: 'The words used are 'attributable to' and I think they have a different significance from 'in the course of''). See also *Standen v Minister of Pensions* (1947) 1 WPAR 905 (injuries sustained during leave); *Giles v Minister of Pensions and National Insurance* (1955) 5 WPAR 445 (injuries sustained during leave); *Richards v Minister of Pensions and National Insurance* (1956) 5 WPAR 631 (fight in barracks); *Miers v Minister of Pensions and National Insurance* (1964) 5 WPAR 673 (suicide); *Freeman v Minister of Pensions and National Insurance* [1966] 2 All ER 40 at 43, [1966] 1 WLR 456 at 461 per Edmund Davies J ('It is not necessary for the applicant to show . . . that service conditions were the sole cause of the suicide; it is sufficient if they played a part in bringing it about').

6 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(3).

7 See *Morris v Minister of Pensions* (1947) 1 WPAR 595 at 598 per Denning J.

8 War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058, art 3(4).

9 See *ibid* art 3(4), (5).

10 See *ibid* art 18.

11 Pensions Act 1995 s 168(1), (3)(c). For the meanings of 'termination of a marriage' and 'judicial separation' for these purposes see PARA 596 note 16 ante.

12 See *ibid* s 168(1), (3)(a); and PARA 596 ante.

13 I.e 3 September 1939 to 19 March 1946: see PARA 601 note 2 ante.

14 Personal Injuries (Emergency Provisions) Act 1939 s 3; extended by the Pensions (Mercantile Marine) Act 1942 s 7 (both repealed).

15 Restriction on the right to damages applied also to persons covered by the various schemes relating to particular classes of seafarers: see PARA 614 post. The War Pensions (Mercantile Marine) Scheme 1964, SI

1964/2058 (as amended) now makes provision to avoid double payments: see art 21 (amended by SI 1988/639).

16 *Makin v Masson* [1948] LJR 325, CA.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

613 General effect of the mercantile marine scheme

TEXT AND NOTES 11, 12--Pensions Act 1995 s 168(1), (1A) substituted, for s 168(1) as originally enacted: Pensions Act 2008 s 138(2).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(iii) Schemes for the Mercantile Marine and Other Seafarers/614. Other schemes for seafarers.

614. Other schemes for seafarers.

In addition to the War Pensions (Mercantile Marine) Scheme 1964¹, there are two further pension schemes concerning persons connected with the sea, the War Pensions (Naval Auxiliary Personnel) Scheme 1964² and the War Pensions (Coastguards) Scheme 1944³. The scheme concerning naval auxiliary personnel provides that the service pensions order⁴ has effect with specified modifications⁵ in relation to the persons covered by the scheme who are disabled or who die, if their disablement or death is directly attributable to a qualifying injury⁶ or detention⁷. Equivalent provision is made by the scheme concerning coastguards⁸.

The War Pensions (Naval Auxiliary Personnel) Scheme 1964 covers persons subject to the Naval Discipline Act 1957⁹ (by virtue of the application of that Act to civilians¹⁰) and who, in pursuance of a naval engagement, are employed in seagoing service in a ship forming part of the Royal Navy or in a depot ship pending becoming so employed or pending termination of such employment¹¹. It also covers certain other persons engaged in ships forming part of the Royal Navy whose terms of enlistment provided that the scheme should apply to them¹².

The War Pensions (Coastguards) Scheme 1944 covers certain officers and men of Her Majesty's Coastguard and of the Auxiliary Coastguard¹³.

1 *Ie* the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058 (as amended): see PARAS 612-613 ante.

2 *Ie* the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985 (as amended): see PARA 599 ante.

3 *Ie* the War Pensions (Coastguards) Scheme 1944, SR & O 1944/500 (as amended): see PARA 599 ante.

4 *Ie* the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see PARAS 595-598 ante.

5 See the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, arts 2(8), 3(2), Sch 3; the Naval, Military and Air Forces etc (Modification of Enactments and other Instruments) Order 1978, SI 1978/1526, art 2, Schedule Pt II; and the Interpretation Act 1978 s 17(2).

6 'Qualifying injury' means a war injury or a war risk injury, being in either case an injury sustained by the naval auxiliary member by reason of his service: War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, art 2(10). For the meanings of 'war injury' and 'war risk injury' see PARA 600 ante.

7 See *ibid* arts 4(1), 6, 8(1). 'Detention', in relation to a naval auxiliary member, means detention which is consequent on the capture, seizure, arrest or other restraint of the naval auxiliary member or of his ship effected by reason of the existence of a state of war, and which is suffered by reason of his service: art 2(2).

8 See the War Pensions (Coastguards) Scheme 1944, SI 1944/500, arts 3, 5, 9; the Naval, Military and Air Forces etc (Modification of Enactments and other Instruments) Order 1978, SI 1978/1526, art 2, Schedule Pt II; and the Interpretation Act 1978 s 17(2).

9 The Naval Discipline Act 1957 repeals and replaces the Naval Discipline Act 1866 which is referred to in the scheme. See generally ARMED FORCES vol 2(2) (Reissue) PARA 13.

10 See the Naval Discipline Act 1957 s 118 (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 21.

11 See the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, arts 2(6), 4(1); and the Interpretation Act 1978 s 17(2).

12 See the War Pensions (Naval Auxiliary Personnel) Scheme 1964, SI 1964/1985, art 4(2).

13 The persons concerned are those subject to what is now the Naval Discipline Act 1957 by virtue of the Coastguard Act 1925 s 2 (as amended) (see ARMED FORCES vol 2(2) (Reissue) PARA 181) and the orders made under it, or by virtue of instructions issued by the Admiralty pursuant to the Defence (Auxiliary Coastguard) Regulations 1941, SR & O 1941/2059 (revoked): see the War Pensions (Coastguards) Scheme 1944, SI 1944/500, art 3.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(iii) Schemes for the Mercantile Marine and Other Seafarers/615. Seamen and other persons employed abroad in the 1914-18 war.

615. Seamen and other persons employed abroad in the 1914-18 war.

The Injuries in War (Compensation) Acts 1914¹ conferred power to frame schemes as to pensions, allowances and other grants to be paid to persons, not being officers or men of any of the forces of the Crown, in respect of injuries or disablement suffered by them whilst employed afloat², or ashore outside the United Kingdom³, in connection with warlike operations, and in the case of their death to their widows and other dependants⁴. A scheme in respect of injuries suffered by persons afloat was to be made by Order in Council⁵ and may include persons not in the direct employment of the former Admiralty, Army or Air Council (now the Secretary of State for Defence), and persons employed on commissioned ships, notwithstanding that by reason of such employment they are subject⁶ to naval discipline⁷. A scheme in respect of disablement suffered by persons ashore may also include persons not in such direct employment⁸.

A separate scheme for merchant seamen was made after agreement between the government and an association of shipowners and mariners⁹.

There must be paid out of money provided by Parliament or, if that money is insufficient, there must be charged on and paid out of the Consolidated Fund of the United Kingdom, such sums as are required for the purpose of fulfilling any obligations incurred before 15 August 1919 by the government of His late Majesty King George V in connection with the 1914-18 war relating to payments for compensation in respect of persons killed or injured on any merchant ship or fishing vessel¹⁰.

1 See the Injuries in War (Compensation) Act 1914 (4 & 5 Geo 5 c 30); and the Injuries in War (Compensation) Act 1914 (sess 2) (5 & 6 Geo 5 c 18).

2 A scheme in respect of persons employed afloat under the Admiralty, Army or Air Council was approved by Order in Council dated 27 May 1915, SR & O 1915/555 (amended by SR & O 1916/395; SR & O 1920/570; SR & O 1920/1307; SR & O 1920/2352; SR & O 1921/1690; SR & O 1924/1285; SI 1949/599; SI 1958/1266).

3 See the Injuries in War (Shore Employments) Compensation Scheme 1914, effective from 3 August 1914 (amended by schemes effective from 1 December 1917 and 1 January 1920 respectively; and by SI 1949/2285; SI 1953/699; SI 1955/1974; SI 1958/1003; SI 1961/1246; SI 1973/1635; SI 1974/1104; SI 1980/1731; SI 1981/1475; SI 1983/756; SI 1983/1713; SI 1985/299; SI 1985/1566; SI 1986/1095; SI 1987/529; SI 1988/624; SI 1989/420; SI 1990/946; SI 1991/911; SI 1993/807; SI 1993/1192; SI 1994/1012; SI 1995/979; SI 1996/573; SI 1997/477; SI 1998/581; SI 1999/857; SI 2000/626; SI 2001/1015). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

4 See the Injuries in War (Compensation) Act 1914 s 1 (s 1(1)-(3) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); the Injuries in War Compensation Act 1914 (sess 2) s 1(1) (s 1(1), (2) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); the Injuries in War Compensation Act 1914 (sess 2) s 2; and the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548 (amended by the Statute Law (Repeals) Act 1973; and SI 1964/488).

5 Injuries in War (Compensation) Act 1914 s 1(1) (as amended: see note 4 supra).

6 le by virtue of what is now the Naval Discipline Act 1957 s 118 (as amended): see ARMED FORCES vol 2(2) (Reissue) PARA 21.

7 See the Injuries in War (Compensation) Act 1914 s 1(2) (as amended: see note 4 supra).

8 See the Injuries in War (Compensation) Act 1914 (sess 2) s 1(2) (as amended: see note 4 supra).

9 See the Seamen's War Risks Compensation Scheme. The original authority for this was an agreement made on 14 October 1915 between the government and an association of shipowners and mariners known as the War Risks Association, and a similar agreement made with respect to the fishing industry in October 1916. These are now administered by the Secretary of State: see the Transfer of Functions (War Risks Compensation) Order 1953, SI 1953/1674. As to the Secretary of State for these purposes see PARAS 625-627 post.

10 Statute Law Revision Act 1958 s 4(1). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

615 Seamen and other persons employed abroad in the 1914-18 war

TEXT AND NOTES--Injuries in War (Compensation) Act 1914, Injuries in War Compensation Act 1914 (Sess 2) repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(iv) Miscellaneous Schemes/616. The Home Guard.

(iv) Miscellaneous Schemes

616. The Home Guard.

There are two categories of Home Guard¹ for the purposes of pensions in respect of disablement or death. The first category comprises persons who served between 21 May 1940 and 31 December 1944, and for those persons pensions are provided under the Royal Warrant dated 21 December 1964², which applies the provisions of the service pensions order³ with modifications⁴. The second category consists of male and female persons who, after 27 April 1952, were or are enrolled or re-engaged to serve in the Home Guard⁵; and for them the service pensions order is also applied with modifications⁶ by the Order by Her Majesty dated 22 December 1964, made under powers conferred by the Home Guard Act 1951⁷.

Under both schemes, where a claim in respect of disablement or death is made, the disablement or death is accepted as due to service provided that: (1) the disablement is due to an injury which is attributable to service or existed before or arose during service and has been and remains aggravated thereby; or (2) the death was due to or hastened by an injury which was attributable to service or the aggravation by service of an injury which existed before or arose during service⁸. Where the claim in respect of disablement was made not later than seven years after the termination of service as a member of the Home Guard, or the death occurred within that time and a claim is made at any time in respect of that death, there is no onus on the claimant to prove these conditions⁹ and in all cases the benefit of any reasonable doubt as to their fulfilment must be given to the claimant¹⁰. 'Injury' for these purposes includes wound or disease but excludes: (a) any injury due to the effects of tobacco; and (b) any injury due to the use of tobacco or the consumption of alcohol, except where the person concerned suffers from a mental condition attributable to service, the degree of disablement in respect of that condition has been assessed at 50 per cent or more, and he started or continued to use tobacco or to consume or continue to consume alcohol due to that condition¹¹.

1 As to the Home Guard see ARMED FORCES vol 2(2) (Reissue) PARAS 8, 17.

2 See the Royal Warrant dated 21 December 1964 concerning Pensions and other Grants in respect of Disablement or Death due to service in the Home Guard (Cmnd 2563); (amended by Cmnd 5118; and by SI 1989/1335; SI 1993/597; SI 1994/771).

3 I.e. the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see PARA 595 et seq ante.

4 See the Royal Warrant dated 21 December 1964 arts 1(1), 2-5, Schedule; the Naval, Military and Air Forces etc (Modification of Enactments and other Instruments) Order 1978, SI 1978/1526, art 2, Schedule Pt II; and the Interpretation Act 1978 s 17(2).

5 See the Order by Her Majesty dated 22 December 1964 (Cmnd 2564) (amended by Cmnd 5119; and by SI 1989/1335; SI 1993/597; SI 1994/771). The Home Guard was stood down on 31 July 1957 and since then its activities have been suspended.

6 For modifications see the Order by Her Majesty dated 22 December 1964 arts 1(1), 3(1), Schedule; the Naval, Military and Air Forces etc (Modification of Enactments and other Instruments) Order 1978 Schedule Pt II; and the Interpretation Act 1978 s 17(2).

7 Home Guard Act 1951 s 1(4) (repealed by the Reserve Forces Act 1996, Schedule 11 para 1).

8 See the Royal Warrant dated 21 December 1964 arts 4(1), 5(1); and the Order by Her Majesty dated 22 December 1964 arts 4(1), 5(1).

9 See the Royal Warrant dated 21 December 1964 art 4(2); the Order by Her Majesty dated 22 December 1964 art 4(2).

10 See the Royal Warrant dated 21 December 1964 arts 4(1), 5(4); and the Order by Her Majesty dated 22 December 1964 arts 4(2), 5(4).

11 See the Royal Warrant dated 21 December 1964 art 1(3) (substituted by SI 1994/771); and the Order by Her Majesty dated 22 December 1964 art 1(3) (substituted by SI 1994/771). For the meaning of 'war injury' generally see PARA 667 ante.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(2) OTHER WAR PENSIONS/(iv) Miscellaneous Schemes/617. Polish forces.

617. Polish forces.

Power was conferred on the then Minister of Pensions (now the Secretary of State)¹ to make a scheme, with the consent of the Treasury, for applying the provisions of the service pensions order² to certain members of the former Polish forces³ in relation to their disablement or death in consequence of service under British command⁴. The Pensions (Polish Forces) Scheme 1964⁵ applies the service pensions order for those purposes with certain modifications⁶. No award or continued payment under an existing award may be made to or in respect of a member of the Polish forces in whose case the Secretary of State is satisfied that he is, or since the termination of his service has been or has become, resident in Poland⁷ and the scheme is limited to payments which fall due for payment before 27 March 2007⁸, but this period may be extended beyond that date by orders made by the Secretary of State with the consent of the Treasury⁹.

In determining whether a pension is payable to a person as a widow under the scheme in respect of any period beginning on or after 19 July 1995, no account may be taken of the fact that the widow has married another if, before the beginning of that period, the marriage has been terminated or the parties have been judicially separated¹⁰.

1 As to the Secretary of State for these purposes see PARAS 625-627 post.

2 I.e the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see PARA 595 et seq ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 I.e members of the Polish naval detachment mentioned in the agreement between the United Kingdom government and the government of Poland on 18 November 1939, members of the Polish armed forces organised and employed under British command in pursuance of the agreement made between those

governments on 5 August 1940, and members of the Polish resettlement forces: see the Polish Resettlement Act 1947 s 1(1); and the Pensions (Polish Forces) Scheme 1964, SI 1964/2007, art 2(5). The 'Polish resettlement forces' means the Polish Resettlement Corps, the Polish Resettlement Corps (Royal Air Force) and the Polish Resettlement Sections of the Auxiliary Territorial Service and the Women's Auxiliary Air Force: see the Polish Resettlement Act 1947 s 10(1); and the Pensions (Polish Forces) Scheme 1964, SI 1964/2007, art 2(8).

4 See the Polish Resettlement Act 1947 ss 1(1), 10(2); the Naval, Military and Air Forces etc (Modification of Enactments and other Instruments) Order 1978, SI 1978/1526, art 2, Schedule Pt II; and the Interpretation Act 1978 s 17(2).

5 See the Pensions (Polish Forces) Scheme 1964, SI 1964/2007 (amended by SI 1972/1435; SI 1974/1045; and prospectively amended by SI 2005/3040).

6 See the Pensions (Polish Forces) Scheme 1964, SI 1964/2007, arts 2(9), 6, Sch 2; the Naval, Military and Air Forces etc (Modification of Enactments and other Instruments) Order 1978, SI 1978/1526, Schedule Pt II; and the Interpretation Act 1978 s 17(2).

7 See the Pensions (Polish Forces) Scheme 1964, SI 1964/2007, art 11 (prospectively amended by SI 2005/3040). An allowance for a dependant not resident in Poland is not precluded by reason of residence there at some time since the termination of the member's service: see the Pensions (Polish Forces) Scheme 1964, SI 1964/2007, art 11 proviso (as so amended).

8 See *ibid* art 14(1). The original period for which a scheme might be made was five years but power was conferred to extend that period: see the Polish Resettlement Act 1947 s 1(1) proviso; and the text to note 9 *infra*. As to the extension of that period to 27 March 2007 see the Pensions (Polish Forces) Scheme (Extension) Order 2002, SI 2002/671.

9 See the Polish Resettlement Act 1947 s 1(1) proviso. See note 8 *supra*.

10 Pensions Act 1995 s 168(1), (3)(c). As to references to the termination of a marriage and to judicial separation for these purposes see PARA 596 note 16 *ante*.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

617 Polish forces

TEXT AND NOTES--Polish Resettlement Act 1947 s 1 further amended: Pensions Act 2008 s 139(1). See further s 139(2)-(4).

NOTES 3, 4--Polish Resettlement Act 1947 s 1(1) amended: Civil Partnership Act 2004 Sch 26 para 17.

NOTES 5, 7--SI 1964/2007 art 11 amended: SI 2005/3040, SI 2009/436. SI 1964/2007 art 11A added: SI 2009/436.

NOTE 8--Period now extended to 27 March 2037: Pensions (Polish Forces) Scheme (Extension) Order 2007, SI 2007/645.

TEXT AND NOTE 10--Pensions Act 1995 s 168(1), (1A) substituted, for s 168(1) as originally enacted: Pensions Act 2008 s 138(2).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(3) WAR PENSIONS COMMITTEES/618. Establishment and membership of war pensions committees.

(3) WAR PENSIONS COMMITTEES

618. Establishment and membership of war pensions committees.

War pensions committees were originally constituted to deal with matters respecting pensions arising out of service in the 1914-18 war¹. The parts of the War Pensions Act 1921 dealing with war pensions committees were repealed, and provision is now made for the establishment and functions of such committees by the Social Security Act 1989².

The Secretary of State³ may by regulations⁴ establish committees, known as war pensions committees, for such areas as may be specified by the regulations⁵. The regulations may, in particular, include provisions with respect to the membership of the committees, the manner in which the members are to be appointed and the period for which, and the terms on which, they are to hold office and the manner in which they may be removed⁶.

Each of the specified areas⁷ must have a war pensions committee, appropriately named⁸. Each committee, other than that for Northern Ireland, consists of between 12 and 20 members appointed by the Secretary of State⁹.

1 See the War Pensions Act 1921 ss 1, 2 (repealed).

2 See the Social Security Act 1989 s 25(6)(a).

3 As to the Secretary of State for these purposes see PARAS 625-627 post.

4 The power to make such regulations is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: see the Social Security Act 1989 s 29(1), (3) (s 29(1) amended by the Social Security (Consequential Provisions) Act 1992 s 4, Sch 2 para 106); and the Social Security Contributions and Benefits Act 1992 s 175(2).

5 Social Security Act 1989 s 25(1). As to the regulations that have been made see the War Pensions Committees Regulations 2000, SI 2000/3180 (as amended). These regulations came into force on 1 January 2001 (see reg 1(1)), and replaced the War Pensions Committees Regulations 1990, SI 1990/1349 (revoked).

6 Social Security Act 1989 s 25(1)(a), (c).

7 The areas specified in the War Pensions Committees Regulations 2000, SI 2000/3180, reg 3, Sch 1 col 1.

8 See *ibid* Sch 1 col 2.

9 *Ibid* reg 7(1). As to the committee for Wales and the committee for Northern Ireland see reg 4.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

618 Establishment and membership of war pensions committees

NOTE 7--SI 2000/3180 Sch 1 replaced: SI 2006/3152.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(3) WAR PENSIONS COMMITTEES/619. Constitution and proceedings of committees.

619. Constitution and proceedings of committees.

A member of a war pensions committee¹ holds office for a period not exceeding three years in any one term of appointment and may be reappointed². He may resign by notice in writing sent to the Secretary of State³ and may be removed by the Secretary of State on certain grounds⁴. The Secretary of State may appoint a new member at any time, whether to fill a casual vacancy or otherwise⁵.

The Secretary of State is required to appoint a chairman for each committee and each committee must elect by ballot a vice-chairman⁶. The appointment of the chairman must be in writing and specify the term of office, which is not to extend beyond the appointee's term of appointment to the committee⁷.

The chairman or, in his absence, the vice-chairman, presides over committee meetings and where both are absent the members present must elect one of their number to act as chairman for that meeting⁸.

The committee must hold a meeting at least twice a year⁹, and the committee decides the time and place of its meetings¹⁰. One third of the membership may requisition a meeting by giving notice in writing to the chairman who must call the meeting within four weeks of receiving the notice¹¹.

The quorum is one-quarter of the committee's members, disregarding any fractions, or four members, whichever is the greater¹²; and decisions must be made by a simple majority of members present and voting¹³.

An official of the Secretary of State may attend any meeting of any committee as an observer¹⁴.

Sub-committees may be appointed to assist the committee in carrying out its functions¹⁵, and must act in accordance with any directions of the committee¹⁶. A sub-committee which considers a complaint made to the committee by a person receiving or claiming a war pension¹⁷ must, as soon as reasonably practicable, submit to the committee a report about any hearing the sub-committee has held of the complaint and a copy of any representations made by it to the Secretary of State¹⁸.

Minutes of a meeting of the committee or a sub-committee must be recorded in a minute book, and must include the names of members present at the meeting, be signed by the person presiding over the meeting at which they are approved as correct and be open to inspection by the Secretary of State¹⁹.

1 As to the establishment and membership of war pensions committees see PARA 618 ante.

2 War Pensions Committees Regulations 2000, SI 2000/3180, reg 7(2), Sch 2 para 1.

3 Ibid Sch 2 para 2. As to the Secretary of State for these purposes see PARAS 625-627 post.

4 See ibid Sch 2 para 3. The Secretary of State may remove a member from office if he has reasonable grounds to believe that the member is unable, unfit or unsuitable to discharge the functions of a member: Sch 2 para 3.

5 Ibid Sch 2 para 4. This provision is subject to reg 7(1) (see PARA 618 note 9 ante): Sch 2 para 4.

- 6 See *ibid* Sch 2 paras 5, 7, 8.
- 7 *Ibid* Sch 2 para 5. The term of the vice-chairman may not exceed the appointee's term as a member: Sch 2 para 7.
- 8 *Ibid* Sch 2 para 9.
- 9 *Ibid* Sch 2 para 10.
- 10 *Ibid* Sch 2 para 11. The Secretary of State decides the time and place of the first meeting of each committee: Sch 2 para 11.
- 11 *Ibid* Sch 2 para 12.
- 12 *Ibid* Sch 2 para 13.
- 13 *Ibid* Sch 2 para 14. The person presiding over the meeting has a casting vote: Sch 2 para 14.
- 14 *Ibid* Sch 2 para 16.
- 15 *Ibid* Sch 2 para 17. A sub-committee consists of no fewer than three members and no more than four-fifths of the total number of members: Sch 2 para 18. The committee must appoint from among its number a chairman of the sub-committee: Sch 2 para 19. The chairman for the sub-committee presides over any sub-committee meeting, but in his absence the members of the sub-committee present must elect one of their number to act as chairman for the purposes of that meeting only: Sch 2 para 19. Decisions of the sub-committee are by a simple majority of the sub-committee members present and voting, and in the event of equality of votes the chairman of the sub-committee has a casting vote: Sch 2 para 20.
- 16 *Ibid* Sch 2 para 22.
- 17 For the meaning of 'war pension' see PARA 595 note 23 ante.
- 18 War Pensions Committees Regulations 2000, SI 2000/3180, Sch 2 para 23.
- 19 See *ibid* Sch 2 paras 15, 21.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(3) WAR PENSIONS COMMITTEES/620. Functions of committees.

620. Functions of committees.

War pensions committees¹ have such functions relating to war pensions² and war pensioners³ as may be conferred upon them by the regulations⁴. In its area⁵, a committee must:

- 252 (1) enable and foster local consultation by the Secretary of State⁶ on issues affecting war pensioners or widows⁷;
- 253 (2) help to increase awareness about war pensions⁸;
- 254 (3) support, monitor and help to increase awareness about the services provided by the War Pensions Agency and by other organisations with a view to ensuring

that the welfare needs of pensioners, widows and their dependants are suitably addressed⁹; and
 255 (4) assist war pensioners and widows with any problem or complaint regarding pensions or the welfare services provided by the War Pensions Agency¹⁰.

In its area a committee may in particular: (a) assist any individual war pensioner or widow in pursuing any problem or complaint mentioned in head (4) above; (b) make representations and recommendations to the Secretary of State about any problem or complaint mentioned in head (4) above; (c) report to the Secretary of State on any matter arising pursuant to its functions under heads (1) to (4) above; and (d) receive and disburse funds from charitable or other sources for the sole purpose of provision of social activities for war pensioners and widows¹¹.

The regulations may also include provisions with respect to the manner in which the committees are to discharge the functions conferred on them and they must exercise their functions subject to, and in accordance with, any such provisions¹².

Any recommendations or representations which a committee makes to the Secretary of State must be by way of a resolution submitted to him¹³.

A committee or sub-committee in receipt of funds from charitable or other sources for the sole purpose of provision of social activities for war pensioners and widows must keep proper accounts of all receipts and disbursements¹⁴. It must also provide a copy of those accounts to the Secretary of State as soon as is practicable: (i) after the end of each financial year; and (ii) at any other time, on receipt of a written request from the Secretary of State¹⁵.

1 As to the establishment and membership of war pensions committees see PARA 618 ante; and as to their constitution and proceedings see PARA 619 ante.

2 For the meaning of 'war pension' see PARA 595 note 23 ante.

3 'War pensioner' means a person in receipt of a war pension, in his capacity as such a pensioner: Social Security Act 1989 s 25(4).

4 Ibid s 25(2). The regulations referred to in the text are the War Pensions Committees Regulations 2000, SI 2000/3180 (as amended): see the text and notes 5-15 infra.

5 As to a committee's area see PARA 618 ante.

6 As to the Secretary of State for these purposes see PARAS 625-627 post.

7 See the War Pensions Committees Regulations 2000, SI 2000/3180, reg 8(1)(a). As from 5 December 2005, this provision is amended so as to refer to surviving spouses and surviving civil partners: see reg 8(1)(a) (prospectively amended by SI 2005/3032).

8 See the War Pensions Committees Regulations 2000, SI 2000/3180, reg 8(1)(b).

9 See ibid reg 8(1)(c). As from 5 December 2005, this provision is amended so as to refer to surviving spouses and surviving civil partners: see reg 8(1)(b) (prospectively amended by SI 2005/3032). As to the War Pensions Agency see PARA 625 note 14 post.

10 See the War Pensions Committees Regulations 2000, SI 2000/3180, reg 8(1)(d). As from 5 December 2005, this provision is amended so as to refer to surviving spouses and surviving civil partners: see reg 8(1)(d) (prospectively amended by SI 2005/3032).

11 See the War Pensions Committees Regulations 2000, SI 2000/3180, reg 8(2). As from 5 December 2005, this provision is amended so as to refer to surviving spouses and surviving civil partners: see reg 8(2) (amended by SI 2005/3032).

12 Social Security Act 1989 s 25(3).

13 See the War Pensions Committees Regulations 2000, SI 2000/3180, reg 9.

14 See *ibid* reg 8(3). As to charities for ex-servicemen see ARMED FORCES vol 2(2) (Reissue) PARA 298 et seq.

15 See *ibid* reg 8(3).

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

620 Functions of committees

TEXT AND NOTE 9--Head (3) now support the Veterans Agency by monitoring its welfare service, raising awareness of the service it provides and liaising with other organisations with a view to ensuring that the welfare needs of pensioners, surviving spouses, surviving civil partners and their dependants are suitably addressed: SI 2000/3180 reg 8(1)(c) (substituted by SI 2006/3152).

TEXT AND NOTE 10--For 'War Pensions Agency' read 'Veterans Agency': SI 2000/3180 reg 8(1)(d) (amended by SI 2006/3152).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(3) WAR PENSIONS COMMITTEES/621. The central advisory committee.

621. The central advisory committee.

There must be a central advisory committee constituted, consisting of officers of the Department of Social Security¹, both local and central, ex-servicemen, and at least one person from one of the war pensions committees² for the time being in existence, to consider such matters as may be put before that committee by the Secretary of State³ for its advice⁴. The Secretary of State must ensure that the central advisory committee includes the chairmen of at least one of the war pensions committees and includes at least one war disabled pensioner, and must cause that central advisory committee to be convened at least once in every year⁵.

1 The statutory wording is 'Ministry', referring to the then Ministry of Pensions; but see PARA 625 post.

2 Ie any committees constituted under the Social Security Act 1989 s 25 (as amended): see PARA 618 et seq ante.

3 As to the Secretary of State for these purposes see PARAS 625-627 post.

4 See the War Pensions Act 1921 s 3 (amended by the Social Security Act 1989 s 25; and the Child Support, Pensions and Social Security Act 2000 s 61(2)).

5 See the Chronically Sick and Disabled Persons Act 1970 s 9(1) (amended by the Social Security Act 1989 s 25(5); and the Child Support, Pensions and Social Security Act 2000 s 61(1)).

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(4) REVIEWS, DISQUALIFICATION AND FORFEITURE/622. Review of decisions, assessments and awards.

(4) REVIEWS, DISQUALIFICATION AND FORFEITURE

622. Review of decisions, assessments and awards.

Any decision accepting or rejecting a claim for pension, any assessment of the degree of disablement of a member of the armed forces or of a person to whom the civilian injuries scheme¹ applies or any final decision that there is no disablement or that the disablement has come to an end, in the case of a member of the armed forces, or that it is not or is no longer serious, in the case of a person to whom the civilian injuries scheme applies, may be reviewed by the Secretary of State² at any time on any ground³.

Any award under the service pensions order⁴ or the civilian injuries scheme may be reviewed by the Secretary of State at any time if he is satisfied that:

- 256 (1) it was made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law;
- 257 (2) there has been any relevant change of circumstances since the award was made; or
- 258 (3) it was based on any decision or assessment such as is mentioned above, and that decision or assessment has been revised⁵.

On such a review the Secretary of State may maintain, or continue, vary or cancel the decision, assessment or award; and any revised decision, assessment or award must be such as may be appropriate having regard to the provisions of the relevant order or scheme⁶.

1 Ie the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended): see PARA 601 et seq ante.

2 As to the Secretary of State for these purposes see PARAS 625-627 post.

3 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 67(1) (amended by SI 1994/772; SI 2001/409); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 76(1) (amended by SI 2001/420). See also *Secretary for State for Defence v Rusling* [2003] EWHC 1359 (QB) at paras [74]-[77], [2003] All ER (D) 186 (Jun) at paras [74]-[77], per Newman J.

4 Ie the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see PARA 595 et seq ante.

5 See ibid art 67(2) (amended by SI 1985/1201; SI 2001/409); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 76(2) (amended by SI 1985/1313; SI 2001/420).

6 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 67(5); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 76(5). An award may only be revised to the detriment of a person in limited circumstances: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983 art 67(3), (4) (amended by SI 1984/1154; SI 2001/409); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 76(3), (4) (amended by SI 1984/1289; SI 2001/420). Special provision is made for the review of decisions, assessments and awards relating to the death

or disablement of a member of the armed forces which is due to service before or during the 1914-18 war: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 67(8)-(11) (amended by SI 1996/1638).

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(4) REVIEWS, DISQUALIFICATION AND FORFEITURE/623. Disqualification and forfeiture.

623. Disqualification and forfeiture.

The Secretary of State¹ may withhold, cancel or reduce any award which might otherwise be payable² where the injury³ giving rise to the disablement or death in respect of which the claim is made was caused or contributed to by the serious negligence or misconduct⁴ of the person concerned⁵. Where a person to or in respect of whom a pension or gratuity may be or has been awarded is, or was at the date of his death:

- 259 (1) imprisoned or detained, including being detained in a young offender institution, in pursuance of a sentence or order of the court upon his being found guilty of an offence⁶; or
- 260 (2) deported from, required to leave or prohibited from entering the United Kingdom⁷; or
- 261 (3) in the case of a person to whom the civilian injuries scheme applies, an enemy alien and, as such, interned, detained or expelled from the United Kingdom⁸,

the Secretary of State may withhold the award of the pension or gratuity or, if it has been awarded, direct that it is to be forfeited⁹. Where the Secretary of State is satisfied that a dependant will suffer hardship where a pension is so withheld or forfeited, he may, however, subsequently pay, with the consent of the pensioner, up to half of the pension awarded to the pensioner's spouse, to an unmarried dependant or to anyone lawfully entitled to give a good receipt¹⁰.

A widow's or other adult dependant's pension (other than any pension awarded to a parent) ceases to be payable if the widow or dependant marries or lives with another person as a spouse, but may be restored on cessation of that relationship¹¹. Widows' pensions which ceased on remarriage are now restored where the subsequent marriage is terminated or where the parties to it become judicially separated¹².

Where the Secretary of State is satisfied that a person who has sustained an injury should, in his own interests, receive medical, surgical or rehabilitative treatment for his disablement but he unreasonably¹³ refuses or neglects to undergo the treatment, the Secretary of State may withhold, cancel or reduce the award in the case of a person to whom the civilian injuries scheme applies¹⁴ and may reduce any disablement pension by not more than half in the case of a member of the armed forces¹⁵.

Where the Secretary of State is satisfied that a sum is due to the Crown, a Secretary of State, a minister or a government department from a person to or in respect of whom a pension or gratuity may be or has been awarded, or that an overpayment has been made to him by the Crown, the Secretary of State may deduct such amounts at such times as he thinks fit from the pension or other payment and apply the amounts so deducted in or towards the sum so due or the overpayment¹⁶.

Where a person fails to draw his pension for a continuous period of not less than 12 months, the award may be cancelled and payment of any arrears may be withheld¹⁷.

1 As to the Secretary of State for these purposes see PARAS 625-627 post. As to appeals from his decisions see PARA 624 post; and ARMED FORCES vol 2(2) (Reissue) PARA 292 et seq.

2 Ie under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended) ('the service pensions order') (see PARA 595 et seq ante); or the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended) ('the civilian injuries scheme') (see PARA 601 et seq ante). As to the other schemes applying the service pensions order with modifications see PARA 612 et seq ante.

3 For the meaning of 'injury' in relation to the service pensions order see PARA 595 ante; and for the meaning of 'injury' in relation to the Home Guard scheme see PARA 616 ante. For the meaning of 'qualifying injury' for the purposes of the civilian injuries scheme see PARA 601 note 4 ante.

4 The word 'serious' qualifies both negligence and misconduct: *Robertson v Minister of Pensions* (1952) 5 WPAR 245 at 266 per Ormerod J. In considering a motoring accident it may be taken into account whether the driving was of such a quality as would call for some criminal action in civil life: *Robertson v Minister of Pensions* supra at 266 per Ormerod J. However, Ormerod J explained that this statement was made only in argument in that case. It is not a prerequisite: see *Minister of Pensions and National Insurance v Grisetti* (1955) 5 WPAR 457 (where unauthorised interference with enemy ammunition was held to constitute serious negligence or misconduct, even though the man's conduct would not in civilian life have rendered him liable to prosecution). See also *Williams (H) v Minister of Pensions* [1947] 2 All ER 564, 1 WPAR 755, where a claimant had shot himself in the foot while cleaning his rifle. Cf where the chain of causation is broken by serious negligence or misconduct: see *Smith v Davey Paxman & Co (Colchester) Ltd* [1943] 1 All ER 286, CA; distinguished in *Minister of Pensions v Williams (OL)* [1947] KB 875, [1947] 2 All ER 93.

5 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 6; and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 6.

6 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 62(1)(a) (amended by virtue of the Criminal Justice 1988 s 123, Sch 8 para 1; and amended by SI 2001/409); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 68(1)(a) (amended by virtue of the Criminal Justice 1988 s 123, Sch 8 paras 1-3; and by SI 2001/420).

7 This extends, in the case of a person to whom the service pensions order applies, to the Isle of Man, and, in the case of a person to whom the civilian injuries scheme applies, to Great Britain or Northern Ireland: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 62(1)(b); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 68(1)(c). This also applies where such a person has had his certificate of naturalisation revoked: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 62(1)(b); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 68(1)(c). For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

8 Ibid art 68(1)(b).

9 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 62(1); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 68(1).

10 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 62(2) (substituted by SI 2001/409); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 68(2) (substituted by SI 2001/420). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 68(2) (as substituted) is amended so as to refer also to civil partners: see art 68(2) (as so substituted; and prospectively amended by SI 2005/3031).

11 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 42 (amended by SI 1984/1154; SI 1993/598; SI 1996/732; SI 1997/286; SI 2005/851); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 71 (amended by SI 1984/1289; SI 1993/480; SI

1997/812; SI 2005/655). As from 5 December 2005, the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 71 (as amended) is further amended so as to refer also to civil partners: see art 71 (as so amended; and prospectively amended by SI 2005/3031).

12 See the Pensions Act 1995 s 168; and PARAS 596, 607, 613, 617 ante.

13 He unreasonably in the opinion of the Secretary of State: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 63(1); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 69(1). Misconduct on the part of a person which renders it necessary, in the opinion of the Secretary of State, for that person's treatment to be discontinued may be regarded as a refusal to receive treatment: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 63(2); Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 69(2).

14 See *ibid* art 69(1).

15 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 63(1).

16 See *ibid* art 60(1); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 66(1) (amended by SI 1987/191).

17 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 64(1); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 73(1).

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

623 Disqualification and forfeiture

TEXT AND NOTES--As to provision for the suspension of an award where a person fails to provide relevant information or is not resident at his last known address see SI 1983/686 reg 69A (regs 69A, 69B added by SI 2006/765); and as to the cancellation of the award after a further failure to provide the requested information see SI 1983/686 reg 69B.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(5) APPEALS/624. Rights of appeal.

(5) APPEALS

624. Rights of appeal.

An appeal lies to a pensions appeal tribunal¹ against the following decisions by the Secretary of State²:

- 262 (1) the rejection of any claim under the service pensions order³ in respect of the disablement of any person on the ground that the injury⁴ on which the claim is based is not attributable to any relevant service⁵ and does not fulfil the required conditions⁶;

- 263 (2) the rejection of any claim under that order in respect of the death of any person on the ground that the necessary conditions are not fulfilled⁷;
- 264 (3) the rejection of any claim in respect of the disablement or death of any person made under the mercantile marine scheme⁸ or the scheme for coastguards⁹ on the grounds that the disablement or death of that person is not directly attributable to a war injury¹⁰, war risk injury¹¹ or detention¹² or that the case is not one in which the specified conditions¹³ are fulfilled¹⁴;
- 265 (4) the rejection of any claim in respect of the incapacity for work, disablement or death of any person made under the civilian injuries scheme¹⁵ on the ground that the incapacity or disablement was not caused by, or the death was not the direct result of, a war injury or, in the case of a civil defence volunteer¹⁶, a war service injury¹⁷;
- 266 (5) the withholding or reduction of any award mentioned in heads (1) to (4) above on the ground that the injury or detention on which the claim is based was caused or contributed to by the serious negligence or misconduct of the person in question or, as the case may be, that his death was so caused or contributed to¹⁸;
- 267 (6) the interim assessment of the degree of disablement of any person in the case of any such claim as is referred to in heads (1) to (4) above¹⁹;
- 268 (7) the final assessment of the degree or nature of such disablement or a decision that there is no disablement, or that the disablement has come to an end or is not, or is no longer, serious or prolonged²⁰.

Notice of appeal must be given in the prescribed manner²¹ and within the prescribed time limits²².

Payment of a pension or gratuity may be suspended in whole or in part pending the determination of any such appeal²³.

1 As to the constitution and procedure of pensions appeal tribunals see ARMED FORCES vol 2(2) (Reissue) PARA 296 et seq.

2 As to the Secretary of State for these purposes see PARAS 625-627 post.

3 Ie under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended) (see PARA 595 et seq ante) or under any such Royal Warrant, Order in Council or Order of His late Majesty or of Her Majesty as is administered by the Secretary of State: see the Pensions Appeal Tribunals Act 1943 s 1(1). As to such warrants and orders see eg the scheme for the Home Guard; and PARA 616 ante.

4 'Injury' includes wound or disease: ibid s 12(1). See also PARA 595 ante.

5 'Relevant service' means any service which, under the Royal Warrant, Order in Council or other order in question, is relevant for the purposes of that claim: ibid s 12(1) (definition substituted by the Pensions Appeal Tribunals Act 1949 s 1(1)).

6 See the Pensions Appeal Tribunals Act 1943 s 1(1), (2) (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 292.

See also *Secretary of State for Defence v Rusling* [2003] EWHC 1359, [2003] All ER (D) 186 (Jun), dealing with the issue of whether a pensions appeal tribunal had jurisdiction to hear an appeal against a particular decision of the Secretary of State. An appeal tribunal cannot take into account any circumstances not obtaining at the time when the decision appealed against was made: Pensions Appeal Tribunals Act 1943 s 5B(b) (added by the Child Support, Pensions and Social Security Act 2000 s 59).

7 See the Pensions Appeal Tribunals Act 1943 s 1(3) (as amended), s 1(3A) (as added); and ARMED FORCES vol 2(2) (Reissue) PARA 292.

8 Ie under the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058 (as amended): see PARA 612 et seq ante.

9 le under the War Pensions (Coastguards) Scheme 1944, SR & O 1944/500 (as amended): see PARA 614 ante.

10 For the meaning of 'war injury' see PARA 600 ante (definition applied by the Pensions Appeal Tribunals Act 1943 s 12(1)).

11 'War risk injury' means an injury falling within the Pensions (Mercantile Marine) Act 1942 s 1 (see PARA 609 note 7 ante), except that, in relation to the persons referred to in s 4(4) (certain salvage workers: see PARA 610 note 11 ante), it means an injury falling within s 1 as amended by virtue of s 4(4): Pensions Appeal Tribunals Act 1943 s 12(1).

12 For the meaning of 'detention' see PARA 609 note 4 ante (definition applied by ibid s 12(1)).

13 le that the case is not one in which:

- 46 (1) the person in question is to be treated for the purpose of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 3 (as amended) (see PARA 609 ante) as having sustained the injury or suffered the detention by reason of his service as a mariner in a British ship; or
- 47 (2) that person is to be treated for the purpose of s 4 (as amended) as having sustained the injury or suffered the detention by reason of his service; or
- 48 (3) the injury was sustained in the circumstances specified in a scheme made under s 5 (as amended) (see PARA 611 ante) or the detention was caused by reason of his service in a ship forming part of the navy: see the Pensions Appeal Tribunals Act 1943 s 2(1).

14 See ibid s 2(1). Where the Secretary of State rejects any such claim on one of the specified grounds and an appeal is brought from his decision, he must notify the appellant before the hearing that he also rejects the claim on the other specified ground, and thereupon the tribunal must treat the appeal as an appeal on the issue whether the claim was rightly rejected on both those grounds, and unless he does so, he is not entitled, if the appeal is allowed, subsequently to reject the claim on the other ground: s 2(2).

15 le under the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended): see PARA 601 et seq ante.

16 For the meaning of 'civil defence volunteer' see PARA 601 note 5 ante (definition applied by the Pensions Appeal Tribunals Act 1943 s 12(1)).

17 See ibid s 3(1). For the meaning of 'war service injury' see PARA 601 note 5 ante (definition applied by s 12(1)).

The Secretary of State must notify the claimant of his decision, specifying that it is made on that ground: s 3(1). Where an appeal is so brought in any case where the Secretary of State has refused to certify an injury sustained by a civil defence volunteer as a war service injury or has revoked such a certificate, the tribunal must consider whether it is a physical injury which arose out of and in the course of the performance by the volunteer of his duties as a member of the civil defence organisation to which he belonged at the time when the injury was sustained, and, except in the case of a war injury, did not arise out of and in the course of his employment in any other capacity; and if the tribunal decides that question in the affirmative, the injury is deemed to have been certified by the Secretary of State as a war service injury: s 3(2). As to the meaning of 'physical injury' see PARA 600 ante (definition applied by s 3(2)).

18 See ibid s 4(1), (2); and ARMED FORCES vol 2(2) (Reissue) PARA 292.

19 See ibid s 5(1) (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 293.

20 See ibid s 5(2) (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 293.

21 See ARMED FORCES vol 2(2) (Reissue) PARA 295.

22 See the Pensions Appeal Tribunals Act 1943 s 8 (as amended); and ARMED FORCES vol 2(2) (Reissue) PARA 295.

23 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 67A (added by SI 1994/772; amended by SI 1995/766); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 76A (added by SI 1994/715; and amended by SI 1995/445).

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

624 Rights of appeal

TEXT AND NOTES--Appeals are now made to the First-tier Tribunal: see the Pensions Appeal Tribunals Act 1943 (amended by the Transfer of Tribunal Functions Order 2008, SI 2008/2833).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(6) THE SECRETARY OF STATE/625. Devolution of pensions powers to the Secretary of State for Defence.

(6) THE SECRETARY OF STATE

625. Devolution of pensions powers to the Secretary of State for Defence.

The Ministry of Pensions was established by the Ministry of Pensions Act 1916, under which the powers and duties of the Admiralty, the Commissioners of the Royal Hospital for Soldiers at Chelsea and of the Army Council and the Secretary of State for War with regard to pensions, other than purely service pensions, were transferred to the Minister of Pensions¹. Similar powers in relation to the air force were conferred on the minister by the Air Force (Constitution) Act 1917². The minister also took over the functions of the statutory committee of the Royal Patriotic Fund³ under powers conferred on him by the Naval and Military War Pensions etc (Transfer of Powers) Act 1917⁴. By the War Pensions Act 1920⁵ the minister was divested of the responsibility of administering pensions in respect of service after 30 September 1921⁶, but responsibility for disability pensions in respect of service in the armed forces after 2 September 1939 was conferred on him by the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939⁷, and for civilians suffering war injuries or, being civil defence volunteers, war service injuries by the Personal Injuries (Emergency Provisions) Act 1939⁸.

The Ministry of Pensions was dissolved on 31 August 1953, and the functions of the minister in relation to pensions⁹ were transferred to the Minister of National Insurance, who was re-styled the Minister of Pensions and National Insurance¹⁰. The Ministry of Pensions and National Insurance was dissolved in 1966 and the functions of the Minister of Pensions and National Insurance were transferred to the Minister of Social Security¹¹, whose functions were transferred in 1968 to the Secretary of State for Social Services¹². In 1988 the functions were transferred to the Secretary of State for Social Security¹³ and subsequently responsibility for the administration of war pensions schemes was transferred to the Secretary of State for Defence¹⁴.

1 See the Ministry of Pensions Act 1916 s 2 (repealed).

2 Air Force (Constitution) Act 1917 s 2(3) proviso (as originally enacted).

3 See the Naval and Military War Pensions etc Act 1915 s 3 (as originally enacted). As to the Royal Patriotic Fund see ARMED FORCES vol 2(2) (Reissue) PARA 298.

4 See the Naval and Military War Pensions etc (Transfer of Powers) Act 1917 s 1 (repealed).

5 See the War Pensions Act 1920 s 1 (as originally enacted).

6 I.e 30 days after the date fixed for the termination of the 1914-18 war: see the Termination of the Present War (Definition) Act 1918 s 1 (repealed); the War Pensions Act 1920 ss 1(1), 2 (as originally enacted); and the Order in Council dated 10 August 1921, SR & O 1921/1276.

7 See the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 1 (repealed).

8 See the Personal Injuries (Emergency Provisions) Act 1939 s 1; and PARA 601 ante. It follows that the minister was responsible for administering all pensions resulting from injuries suffered in service except service between 1 October 1921 and 2 September 1939, and service otherwise than in war before August 1914.

9 The functions of the Minister of Pensions so far as they related to medical and surgical treatment (including the supply and repair of artificial limbs and other appliances) and the provision of vehicles in England and Wales were transferred to the Minister of Health: Transfer of Functions (Ministry of Pensions) Order 1953, SI 1953/1198, arts 1(3), 2(1)(a).

10 Ibid arts 2(1)(c), 3(1). These provisions were made under the Ministers of the Crown (Transfer of Functions) Act 1946.

11 See the Supplementary Benefit Act 1966 s 2(1)(a) (repealed). That Act was formerly called the Ministry of Social Security Act 1966: see the Social Security Act 1973 s 99(18) (repealed).

12 See the Secretary of State for Social Services Order 1968, SI 1968/1699, arts 2, 3.

13 See the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843. As to the Secretary of State for Social Security see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 503.

14 As to the transfer of the war pensions functions from the Secretary of State for Social Security to the Secretary of State for Defence see the Transfer of Functions (War Pensions etc) Order 2001, SI 2001/3506. See eg the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 70; and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 80.

UPDATE

612-626 The mercantile marine scheme ... Miscellaneous duties of the Secretary of State for Defence

SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

625 Devolution of pensions powers to the Secretary of State for Defence

NOTE 3--Naval and Military War Pensions etc Act 1915 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(6) THE SECRETARY OF STATE/626. Miscellaneous duties of the Secretary of State for Defence.

626. Miscellaneous duties of the Secretary of State for Defence.

The Secretary of State for Defence¹ may administer any pension awarded to or in respect of any person if that person:

269 (1) has not attained the age of 18; or

- 270 (2) is, in the opinion of the Secretary of State, incapable of managing his affairs by reason of mental infirmity; or
 271 (3) is being maintained in a hospital or other institution²; or
 272 (4) is a person in whose case the award can be forfeited or has been restored³,

or if, in any other case, the Secretary of State considers that it is in that person's interests that it should be so administered⁴. A pension which is being so administered may, as to the whole of it or such part as the Secretary of State thinks fit, and at such times as he thinks fit, be applied for the benefit of the person to or in respect of whom it has been awarded or be paid to any person whom the Secretary of State considers a fit and proper person so to apply it⁵.

The Secretary of State must make provision for the care of any children (including illegitimate children) of members of the armed forces who have died from causes arising out of their service in the 1914-18 war if those children are suffering from neglect or want of proper care⁶; and for neglected children in the United Kingdom⁷ or the Isle of Man to or in respect of whom any pension is being paid on account of the death of a parent since 3 September 1939 under the service pensions order⁸ or any of the schemes⁹ providing similar benefits¹⁰.

1 See PARA 625 ante.

2 I.e. an institution to which the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 56 (as substituted) applies (see art 61(1)(c) (amended by SI 1983/409)) or to which the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 64 (as substituted) applies (see art 67(1)(c) (amended by SI 1983/420)).

3 I.e. under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 62 (as amended) or the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 68 (as amended): see PARA 623 ante.

4 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 61(1); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 67(1).

5 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 61(2); and the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 67(2) (amended by SI 1987/191).

6 See the War Pensions (Administrative Provisions) Act 1918 s 9(1) (amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)(a)). In practice no such cases are now likely to arise.

7 For the meaning of 'United Kingdom' see PARA 402 note 4 ante.

8 I.e. the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see PARA 595 et seq ante.

9 As to pensions instruments for persons other than members of the armed forces see PARA 599 et seq ante.

10 See the War Orphans Act 1942 s 1(1), (4) (amended by the Armed Forces Act 1981 s 28(2), Sch 5 Pt I; and by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699). See also ARMED FORCES vol 2(2) (Reissue) PARA 301.

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SI 1983/883 (as amended) consolidated in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/697, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/WAR AND ARMED CONFLICT (VOLUME 49(1) (2005 REISSUE))/7. WAR PENSIONS/(6) THE SECRETARY OF STATE/627. Duties of the Secretary of State for Work and Pensions.

627. Duties of the Secretary of State for Work and Pensions.

When selecting persons for sheltered employment facilities under the Disabled Persons (Employment) Act 1944¹, the Secretary of State for Work and Pensions² must give preference to persons who have served whole-time in the armed forces of the Crown or in the merchant navy or the mercantile marine and whose disability is due to that service³.

¹ See facilities under the Disabled Persons (Employment) Act 1944 s 15 (as amended): see EMPLOYMENT vol 39 (2009) PARA 538.

² See the Minister of Labour Order 1959, SI 1959/1769; the Secretary of State for Employment and Productivity Order 1968, SI 1968/729; the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 3(1); the Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986; and the Secretaries of State for Education and Skills and for Work and Pensions Order 2002, SI 2002/1397.

³ See the Disabled Persons (Employment) Act 1944 s 16(1) (amended by the Employment and Training Act 1973 s 14(2), Sch 3 para 2, Sch 4; the Armed Forces Act 1981 s 28(2), Sch 5 Pt I; and the Disability Discrimination Act 1995 s 61(6)). A disabled person's disability is to be treated as due to service of a particular kind only in such circumstances as may be prescribed: Disabled Persons (Employment) Act 1944 s 16(2) (added by the Disability Discrimination Act 1995 s 61(6)).